



**DEALER TERMS AND
CONDITIONS
(VALID FROM MARCH 2008)**



1.1 **Definitions and Interpretation** In this Agreement the following words and expressions shall have the following meanings unless this Agreement states otherwise:

“Abandoned Call Process” means that process defined as such in the description of the Services;

“Accepted Application” means an Application submitted by the Dealer to Company and not a Reject;

“Agreement” means these terms and conditions and the Confidential Trade Application and any schedules thereto;

“Agent” means any individual engaged by the Dealer in the provision of the Services, including Telephone Advisors;

“Application” means an order for a Product obtained by the Dealer from a Customer;

“Assist Partner” shall mean a Dealer, who is bound by the terms of Clauses 5.14 and 8.4-8.8, along with all other terms of this Agreement;

“Assist Referrer” shall mean a Dealer, who is bound by the terms of Clauses 5.14, 8.4 and 8.9-8.11, along with all other terms of this Agreement;

“Brand Guidelines” shall mean the Company’s brand guidelines as set out in Appendix A

“Business Day” means any day (other than a Saturday or Sunday) when principal banks are open for the transaction of business in London;

“Call Scripts” means any documents containing scripts to be followed by the Telephone Advisors in relation to the Products provided by the Company;

“Clawback” means the recovery of any Commissions and/or bonuses or other amounts paid to the Dealer by a network operator and/or the Company;

“Commission” means the commission for the provision of the Services payable in accordance with clause 11;

“Commencement Date” means the date of the Confidential Trade Application;

“Company” means The Carphone Warehouse Limited trading as Hugh Symons Communications of Alder Hills Park 16 Alder Hills Poole Dorset BH12 4AR (with registered office at 1 Portal Way, London, W3 6RS and Company No. 2142673);

“Company Group” means Best Buy Europe Distributions Limited (company no 6534088) and its subsidiary and holding companies and any subsidiaries of such holding companies whether direct or indirect from time to time and in the case of The Carphone Warehouse Limited, includes Best Buy Co. Inc. and its



affiliates and subsidiary companies from time to time and The Carphone Warehouse Group plc and its subsidiary and holding companies (if any) from time to time and in each case, "subsidiary company" and "holding company" shall have the meanings set out in the Companies Act 2006, section 1159;

“Company Outbound/Inbound Process” means the outbound/inbound telesales process as amended by Company from time to time;

“Company Website” means Company’s website found at www.yourhsc.com and any other website which Company may notify in writing to the Dealer from time to time;

“Confidential Information” means all information which relates to the business affairs, products, services, marketing strategy, trade secrets, know-how, personnel, customers and suppliers of either party, all data subject to the DPA, other data, and information which is supplied or in respect of which access is granted by one party to the other pursuant to this Agreement, or which was disclosed by one party to the other either directly or indirectly provided that Confidential Information shall not include information:

- 1 (i) which was in the public domain at the time of disclosure;
- (ii) which, though originally Confidential Information, subsequently falls into the public domain through no fault of either party receiving the Confidential Information, as of the date of its so falling;
- (iii) independently developed by either party where such party can show it had no access to Confidential Information received under this Agreement;
- (iv) lawfully in the possession of either party at the time of disclosure or which is subsequently lawfully received from a third party; or
- (v) disclosed pursuant to a duty imposed by law or by a court of competent jurisdiction or the requirements of a relevant regulatory authority but only to the extent so required.

“Confidential Trade Application” means the application form completed by the Dealer to which these terms and conditions are a Schedule;

“Confirmed Purchase” means where a Customer has completed an Accepted Application for a mobile phone service minimum term contract (forming part of the Products), such Application has been obtained in compliance with this Agreement, the Customer successfully connects for the first time to the relevant service and if applicable and/or able does not subsequently request cancellation of the service within the Customer Cancellation Period;

“Customer” means a person who has completed an Accepted Application;

“Customer Cancellation Period” means, in respect of Accepted Applications, 14 days (inclusive) starting, in the case of each Accepted Application, on the day of receipt by the Customer of the relevant Product;



“Customer Information” means name, address, telephone number, email address, salary, profession and other personal information in relation to Customers and Prospective Customers;

“Customer Services” means such services (if any) forming part of the Services provided to Customers;

“Data Controller” has the meaning given by the DPA;

“Data Protection Directives” means the European Union Directive entitled “Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data” and the European Union Directive entitled “Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector”;

“Data Protection Legislation” means any United Kingdom legislation in force from time to time which implements the Data Protection Directives or otherwise relates to the use of personal data including the DPA;

“Data Protection Policy” means The Carphone Warehouse Group plc Data Protection Policy available at www.carphonewarehouse.com and attached as Schedule 5;

“Data Subject” means a living individual who is the subject of Personal Data;

“Dealer” means the person named as such in the Confidential Trade Application and will include Assist Partners and Assist Referrers;

“Dealer’s Branding” means the name, trademarks (registered or otherwise) and logos owned by or licensed to the Dealer (other than by the Company);

“Dealer’s Website” means the Dealer’s URL specified as such in the Confidential Trade Application or as otherwise agreed in writing by the parties;

“DPA” means the Data Protection Act 1998 (including any amendments from time to time as applicable);

“Event of Force Majeure” means an event which is beyond the reasonable control of the affected party for the avoidance of doubt this shall include the acts or omissions of any third party telecommunications provider but it shall not include industrial or other disputes involving the affected party’s staff or any sub-contractor of the claiming party or its staff, or any shortage of labour, materials or other resources;

“Good Industry Practice” means the exercise of that degree of reasonable skill, diligence, prudence and foresight which would be expected from a skilled and experienced provider of services similar to the Services, seeking in good faith to comply with its contractual obligations;



“Intellectual Property Rights” all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“Jointly Branded Advertising Materials” means any advertising material jointly created by the Company and the Dealer in accordance with clause 13.11 (of Schedule 1), including but not limited to point of sale displays, stands and signage, technical brochures and other materials to be used by Dealer in connection with the promotion, advertising or sale of the Products;

“Outbound/ Inbound Services” means outbound and/or inbound telemarketing services (if any) forming part of the Services provided by the Dealer;

“Personal Data” means personal data as defined in the DPA in relation to Prospective Customers or Customers including the Customer Information;

“Price Book” means a publication issued by the Company from time to time, that lists, amongst other things, the prices, commissions, procedures and/or conditions on which Products are supplied by the Company;

“Prices” means the prices for the Products as set out from time to time in the Dealer price guide;

“Processing” means obtaining, recording or holding Personal Data or carrying out any operation or set of operations on Personal Data;

“Products” means any one or more of the mobile telephony products and services, including (but not limited to) the sale of mobile phone handsets, SIM cards, network telephony airtime, data and other contracts and products offered by Company to the Dealer in accordance with this Agreement;

“Prospective Customer” means a person who may become a Customer;

“Qualifying Criteria” means those criteria defined as such in the description of the Services;

“Reject” means any Application that is rejected by Company and/or a network operator in accordance with the Company’s and/or network operator’s standard processing procedures;

“Services” means the services provided by the Dealer to Company which may include (but are not limited to) marketing and sales of Products to Customers, outbound/inbound telemarketing, online selling of Products, as agreed by Company from time to time in writing;



“Slam” means any or several of the following, where the Prospective Customer or Customer:

- (i) has never been contacted by the Dealer;
- (ii) has been contacted by the Dealer, but has not given the Dealer authorisation to register the Prospective Customer or Customer for a Product;
- (iii) has agreed to purchase a Product from the Dealer and the Dealer has submitted a request for a different product or service, which the Prospective Customer or Customer has not agreed to purchase;
- (iv) has agreed to purchase a Product from the Dealer having understood, as a result of a deliberate attempt by the Dealer to mislead, that it is making an agreement with a different communications provider; or
- (v) any other form of sales and marketing practice which Company may from time to time reasonably consider to constitute slamming or mis-selling and, in each case, “Slams”, “Slammed” and “Slamming” shall be interpreted accordingly;

“Telephone Advisors” means individuals engaged by the Dealer in the provision of the Outbound/Inbound Services and/or the Customer Services;

“Term” means the term of this agreement as set out in clause 24.1;

“Terms and Conditions of Sale” means the terms and conditions relating to the sale of a handset provided by the Company to the Dealer from time to time;

“Terms and Conditions of Service” means the network operator terms and conditions relating to the provision of airtime or data services provided by the Company to the Dealer from time to time; and

“TUPE Regulations” means the Transfer Of Undertakings (Protection Of Employment) Regulations 2006.

- 1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment of it.
- 1.3 Unless otherwise provided the singular includes the plural and the masculine includes the feminine and vice versa.
- 1.4 Any reference to a person shall include persons or partnerships or firms and other such un-incorporated bodies and companies and corporate bodies and all other legal persons of whatever kind and howsoever constituted.
- 1.5 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.6 References to clauses are, unless otherwise provided, references to clauses of these terms and conditions.



1.7 In the event and to the extent only of any conflict between these terms and conditions and the Confidential Trade Application, these terms and conditions shall prevail.

1.8 In the event and to the extent only of any conflict between the clauses of these terms and conditions and any schedules, the relevant clause shall prevail.

2 ORDER ACCEPTANCE

2.1 All orders placed by the Dealer for Products whether written or oral shall constitute an offer to the Company, under this Agreement, subject to availability of the Products and to acceptance of the order by the Company's representative. Any quotation given by the Company does not constitute an offer capable of acceptance. This Agreement shall apply in respect of all contracts for the supply of Products of any nature whatsoever by the Company to the Dealer.

2.2 All orders are accepted and Products supplied subject to this Agreement only. No terms or conditions put forward by the Dealer shall apply. Subject to clause 2.3, no amendment of this Agreement will be valid unless confirmed in writing on or after the date hereof by the Company's authorised representative.

2.3 The Dealer shall be responsible for ensuring the accuracy of the order and for giving the Company any necessary information to enable the Company to perform its obligations under the Agreement.

3 DELIVERY

3.1 Any dates given for delivery are estimates only and the Company shall not be responsible for any delays. Time for delivery shall not be of the essence.

3.2 The Company reserves the right to make delivery by instalments. In that event this Agreement shall apply to each delivery as though it were the subject of a separate contract and failure by the Company to deliver any one or more installments or any claim by the Dealer in respect of any one or more installments shall not entitle the Dealer to treat the contract as repudiated.

3.3 If the Company agrees to arrange for delivery of the Products the Dealer shall give verbal and written notice to the Company forthwith if same are not received within three (3) days of the expected delivery date or within such lesser period within which such notice is required to be given to the carrier (if any) and if the Dealer fails so to do delivery shall be deemed to have been effected whether or not it has actually been effected.

3.4 Save as mentioned in clause 3.3 the Dealer shall take delivery at the Company's premises within three (3) days of the Company informing the Dealer that the Products are ready for collection.

3.5 If the Company agrees to make delivery to the Dealer or its nominee such delivery shall be effected to the address of the Dealer or its nominee. Even in such cases, the Company reserves the right to request the Dealer to nominate or appoint its own carrier for the purposes of effecting such delivery.



- 3.6 The Dealer shall inspect the Products on delivery. Unless the Dealer shall deliver written notice to the Company within one (1) day of delivery to the effect that same are not those ordered, or are damaged or subject to shortage, and unless the Dealer shall in all respects comply with the terms and conditions of the carrier (if any), the Dealer shall be deemed to have accepted the Products and shall not be entitled to reject those which are not in accordance with the contract. If the Dealer shall give written notice as aforesaid, it shall comply with the Company's instructions concerning the return or retention for inspection of such Products which shall be at the Dealer's risk until back in the possession of the Company. In no event shall the Dealer be entitled to reject the Products on the basis of any defect or failure which is so slight that it would be unreasonable for the Dealer to reject same.
- 3.7 If the Dealer fails to collect the Products, give adequate delivery instructions or accept delivery when tendered (as the case may be) the Products shall be at the Dealer's risk and the Company may:
- 3.7.1 claim payment;
 - 3.7.2 store the Products until actual delivery and charge the Dealer for the costs of storage;
 - 3.7.3 sell the Products at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Dealer for the excess over sums owing by the Dealer or charge the Dealer for any shortfall; or
 - 3.7.4 terminate the contract and/or the Agreement.

For the avoidance of doubt, time is of the essence for acceptance.

4 CANCELLATION AND RESCHEDULING

Any request by the Dealer for cancellation of any order or for rescheduling of deliveries will only be considered by the Company if made at least six (6) hours before dispatch of the order, and shall be subject to acceptance by the Company at the Company's sole discretion, and subject to a reasonable administration charge therefore by the Company. The Dealer hereby agrees to indemnify the Company against all loss, costs (including but not limited to loss of profit the cost of labour and materials used and overheads incurred), damages, charges and expenses arising out of the order and its cancellation or rescheduling.

5 THE DEALER'S OBLIGATIONS TO THE COMPANY

- 5.1 At all times during the Term the Dealer shall:
- 5.1.1 provide (and will procure that any employee, agent, subcontractor, partner or similar party shall provide) all of the Dealer's obligations under this Agreement in accordance with Good Industry Practice, the Company's Outbound/Inbound Process as amended from time to time, any customer service or other requirements reasonably specified by the Company from time to time, all statutory and regulatory requirements (including The Unfair Commercial Practices Directive (2005/29/SC)) and all codes of practice relating to the provision of the Services, (including the Advertising Standard Authority Code of Advertising and the Code of Practice for the Sale and Marketing of Subscriptions to Mobile Networks dated 31 July 2007);



- 5.1.2 not promote or facilitate the sale of any Company products or goods other than the Products at the Prices or as otherwise agreed in writing with the Company;
- 5.1.3 immediately notify Company of any breach of any of its obligations under this Agreement or any matter giving rise to any event under clause 24.2;
- 5.1.4 ensure that any Customer is required to accept any relevant Terms and Conditions of Sale and/or any Terms and Conditions of Service and ensure that the Customer is given the option to tick a box to agree to accept contact by electronic communication (e.g. email and SMS) before they complete their order for any Products;
- 5.1.5 ensure that any services and products other than the Products provided by the Dealer comply with all relevant statutory and regulatory requirements, are not obscene, gratuitous or defamatory or encourage conduct that would constitute a criminal offence or otherwise violate any applicable law;
- 5.1.6 comply with any and all applicable laws and (including but not limited to the Act and the Consumer Protection (Distance Selling) Regulations 2000 or subsequent amendment or same) in connection with this Agreement in respect of the selling, installing, maintaining, connecting and provisioning of Products, and also in respect of running a business. In particular, and without limitation, the Dealer must comply with the DPA or such other subordinate and/or replacement legislation. The Dealer shall obtain promptly and maintain, at its expense, all necessary licences, certificates, permits or other documents as may be required by local authority law or local council regulations or by the United Kingdom Government or otherwise in order to sell the Products; and
- 5.1.7 make it clear on the Dealer's Website that the Customer would be purchasing the Product from the Company and display in the "About Us" section or in a prominent position on the Dealer Website the following statement: "Mobile phone airtime contracts and handsets sold with an airtime contract through this website are purchased from Hugh Symons Communications, a trading division of The Carphone Warehouse Limited.

However, The Carphone Warehouse Limited assumes no responsibility and is not liable for any other products or services promoted or sold through this website or any content of this website. Hugh Symons Communications is a trading division of The Carphone Warehouse Limited, registered in England under company number 2142673, 1 Portal Way, London W3 6RS, VAT number 744032068.”;

- 5.2 If, in the reasonable opinion of Company, the Dealer has breached clause 5.1.5, the Dealer shall immediately remove the offending material or content and shall publish such material as the Company may reasonably require (and at the Dealer's expense) in order to restore the reputation of the Company. This shall not prejudice any claim the Company may have against the Dealer.
- 5.3 The Dealer agrees to use its best endeavours to promote and procure orders and Customers for the Products.



- 5.4 In providing the Services, the Dealer will:
- 5.4.1 immediately (and in any event, within 24 hours of the complaint being made and/ or the Slam alleged), provide to Company, full details of any Slamming complaint of which it becomes aware and shall provide all assistance as required by Company in relation thereto;
 - 5.4.2 if any employee, agent, subcontractor or partner (“**Agent**”) is found acquiring customers more than once through Slamming or in the event that Company receives or becomes aware of two or more complaints which allege Slamming by an Agent (regardless of whether the alleged Slam is established or not), immediately ensure that that Agent does not sell Company Products until such time as they have completed a training programme (the “**Training Programme**”) which will provide the Agent with a comprehensive instruction on how to avoid Slamming, the costs of the Training Programme to be met by the Dealer; and
 - 5.4.3 if the Agent is found acquiring customers through Slamming after completion of a Training Programme, immediately ensure that the Agent does not sell Company Products at any time thereafter.
- 5.5 The Dealer shall ensure that the procedures notified to it by Company from time to time are complied with fully, including but not limited to those relating to credit checks, Customer approvals and any other procedures regarding Customer verifications. Any misuse or failure to comply with these procedures will entitle the Company to (without prejudice to any other rights under this Agreement or at law) terminate this Agreement.
- 5.6 The Dealer shall co-operate with the Company and comply with all of its reasonable directions, particularly with regard to standards of promotion, quality, service and marketing which may be advised by the Company to the Dealer from time to time. In particular the Dealer agrees to utilise all point of sale material supplied by the Company and to provide in advance to the Company for its prior approval any copies and samples of advertising, publicity, promotional and material concerning the Products and to employ qualified staff as will properly provide for sales, advisory, installation, repair and after sales service of the Products.
- 5.7 Any sale leads passed to the Dealer by the Company are to be used only for the purpose of obtaining customers for the Products as directed by the Company and use of sales leads by the Dealer for any other purpose will entitle the Company to (and without prejudice to any other rights under this Agreement or at law) terminate this Agreement.
- 5.8 The Dealer shall not make any representations or warranties in respect of the Products without the Company's prior written consent nor incur any liability on behalf of the Company or any network operator, and shall in no way make any unauthorized, false or misleading representations or statements regarding the Products and/or Services.
- 5.9 The Dealer shall attend and shall ensure its staff attends such training as is necessary and at the Dealer's cost to fulfil the Dealer's obligations under the Agreement, or as required by Company.



- 5.10 This Agreement and any agreements with any network operator shall not be deemed to create any partnership or employment relationship between the parties. The Dealer shall act as principal on its own account in all circumstances and shall not hold itself out as the agent of the Company or any network operator or purport to act on the Company's or any network operator's behalf in dealing with third parties.
- 5.11 The Dealer shall sell Products and provide Services to end-user customers only and not act as distributor or reseller.
- 5.12 The Dealer must take such steps as may be reasonably required to assist Customers to obtain updates issued by a network operator of any software or hardware comprised in the Products sold at any time by the Dealer. The Dealer shall inform Customers of the availability, if applicable, of the Company's network of service centres. Any service and installation work performed by the Dealer shall be carried out in accordance with all the terms of the Agreement between the network operator and the Company.
- 5.13 The Dealer must not re-chip or knowingly connect cellular equipment which has been re-chipped (unless with prior consent of the network operator for each particular case) or interfere with SIM cards or assist any other person to re-chip and connect cellular equipment or interfere with SIM cards.
- 5.14 Where acting as an Assist Partner or Assist Referrer, the Dealer will identify potential Customers and introduce them to the Company.

6 PREMICELL/ FIXED CELLULAR TERMINAL/ GSM GATEWAYS

- 6.1 Unless expressly agreed in writing by a network operator and/or the Company for each occasion, any "Premicell", "Fixed Cellular Terminal" or "GSM Gateway" activity (as those terms as commonly understood in the mobile telephony industry) by a Customer will result in full Clawback.

7 OUTBOUND MARKETING

- 7.1 Where the Dealer provides Outbound/Inbound Services or Customer Services:
- 7.1.1 the Dealer undertakes that it (and will procure that its employees, agents, contractors and/or other partners or similar parties) will provide such Services in accordance with any instructions received from Company;
- 7.1.2 the Dealer shall not use any auto-diallers in providing the Services unless Company has authorised this in writing in which case the Dealer undertakes that it shall, and shall procure that the Telephone Advisers shall comply, with the Abandoned Call Process;
- 7.1.3 the Dealer shall ensure that all Telephone Advisers are suitably qualified to perform the Outbound/Inbound Services and the Customer Services as required under this Agreement and the Dealer shall ensure that each Telephone Advisor satisfies the Qualifying Criteria;



- 7.1.4 the Dealer shall train Telephone Advisors using its own trainers and at its cost, as may be required from time to time to perform the Outbound/Inbound Services and the Customer Services as envisaged by this Agreement, in accordance with any training programme and other instructions provided by Company, and so that they are well informed about the Products and familiar with any Call Scripts. The Dealer shall ensure that it does not allow any Telephone Advisors to sell Products unless they have achieved a pass rate of 100% in their training. The Dealer shall on request report to the Company about any Telephone Advisor who has undergone training and their respective pass rate. In addition and for the avoidance of doubt, all on-going training and also all replacement agent costs will be borne by the Dealer;
- 7.1.5 make it clear after the customer has indicated that they are interested in purchasing a Product but before the application for the Product is completed that the customer would be purchasing the Product from the Company and state that the Company is a trading division of The Carphone Warehouse Limited, registered in England under company number 2142673, 1 Portal Way, London W3 6RS, VAT number 744032068;
- 7.1.6 the Dealer shall ensure that no document or scripts (including Call Scripts) used by the Dealer in the performance of the Outbound/Inbound Services or the Customer Services be distributed to or used with Prospective Customers or Customers or otherwise used without the prior written consent of the Company;
- 7.1.7 the Dealer shall solely use data of Prospective Customers received from Company (or the supplier designated by Company) using specified standard processes (including the File Transfer Protocol site) and adhering to all specified data security processes by the Company from time to time;
- 7.1.8 the Dealer shall return to Company any data of Prospective Customers provided by Company by the third working day of each month following the month in which such data has been used for telemarketing. The Dealer shall ensure that any copies of the data of Prospective Customers are destroyed and not used again for telemarketing;
- 7.1.9 the Dealer shall respond promptly to any requests from Company or from the supplier designated by Company for the verification of any data of Prospective Customers or call records;
- 7.1.10 the Dealer shall only make calls only between the hours of 09.00 and 20.00 Monday to Friday, 10.00 and 18.00 on Saturday and at no time on Sundays;
- 7.1.11 the Dealer shall record all Outbound/Inbound Services calls and Customer Services calls, retain for six months and thereafter destroy the recordings and provide Company with full access to such recordings whilst retained upon request;



- 7.1.12 the Dealer shall listen to and record a minimum of 5% of weekly telephone sales made and provide Company with regular feedback on any findings of sales that may amount to Slamming and on the remedial actions the Dealer has taken as a result. In addition, the Dealer will ensure Company can audit all such findings every six (6) months;
 - 7.1.13 the Dealer shall provide, on request, a minimum of 20 taped calls to the Company per week which should be a mix of conversions and rejections for Company to listen to in order to gain a better understanding of the sales experience from a customer perspective; and
 - 7.1.14 following termination of this Agreement, the Dealer shall supply any call recordings that Company may request that may involve Slamming.
- 7.2 The Dealer shall not undertake any activity regulated by the Financial Services Authority in connection with any services provided by Company or any member of the Company Group, including but not limited to promoting, administrating and advising on contracts of insurance and shall only act as an introducer in relation to insurance forming part of the Products.
- 7.3 The Dealer will not intentionally or negligently act in any way or make any omission that would, in the opinion of Company (in its absolute discretion) bring Company Group or the business of Company Group into disrepute in any manner or otherwise damage the brand or reputation of Company Group.
- 7.4 The Dealer warrants that:
- 7.4.1 it is able to enter into this Agreement on the terms set out herein;
 - 7.4.2 has all the necessary capability and resources in order to provide the Services in accordance with this Agreement;
 - 7.4.3 all Customer Information used by the Dealer in the provision of the Services has been obtained legally and where data has been obtained from a third party, the Prospective Customer or a Customer has given consent to that third party for their data to be passed on to third parties for marketing purposes; and
 - 7.4.4 it is, and shall remain, registered for value added tax (“VAT”) for so long as it is required by law to be so, during the term of this Agreement and will provide Company with a copy of its VAT certificate or letter headed paper on request.

8 COMPANY’S RIGHTS AND OBLIGATIONS TO THE DEALER

- 8.1 Company undertakes that it will:
- 8.1.1 provide the Dealer with all reasonably necessary documents, data, information, products and/or materials relating to the Products within sufficient time to enable the Dealer to provide the Services in accordance with this Agreement;



- 8.1.2 without imposing any financial obligation on the Company provide such advice, assistance and co-operation as the Dealer may reasonably request in order to perform the Services; and
 - 8.1.3 use reasonable endeavours to process Applications in accordance with its standard processing procedures.
- 8.2 The Dealer shall have no authority to commit Company and Company shall be under no obligation to accept any Application for the Services and the credit checking policy used by Company or a network operator from time to time shall be that party's sole discretion.
- 8.3 For the avoidance of doubt, the Company shall be under no obligation to make further Products available to the Dealer to market, promote or sell on the terms of this Agreement and the Company shall be entitled to withdraw any of the Products at any time on thirty (30) days notice to the Dealer.
- 8.4 Where the Dealer is acting as an Assist Partner or an Assist Referrer the Company will promote the Products directly to potential Customers introduced to the Company under the terms of Clause 5.14 above and the Company will conclude all orders for Products directly with them.
- 8.5 Where the Dealer is acting as an Assist Partner and an order for Products has been placed by a Customer, the Company will deliver the Products to the Assist Partner in accordance with the provisions of Clause 3 above for shipment to the Customer by the Dealer.
- 8.6 Where the Dealer is acting as an Assist Partner, the Products will be delivered to the Assist Partner at 50% of their Price, subject always to the provisions of Clause 9 below.
- 8.7 Subject always to the provisions of Clause 11 below, where the Dealer is acting as an Assist Partner, he shall be entitled to Commission on Products at 50%.
- 8.8 Where the Dealer is acting as an Assist Partner and any event as described in Clauses 12.1-12.8 below occurs, the Company shall be entitled to:
 - 8.8.1 claim Clawback on the Commission paid to the Assist Partner in accordance with the provisions of Clause 12 below; and
 - 8.8.2 reclaim, in full, 50% of the Price of the Products delivered to the Assist Partner.
- 8.9 Where the Dealer is acting as an Assist Referrer and subject to the provisions of Clause 8.4 above, the Company will ship the Products directly to the Customer.
- 8.10 Subject always to the provisions of Clause 11 below, where the Dealer is acting as an Assist Referrer, he shall be entitled to Commission on the products at 25%. For the avoidance of doubt, the Assist Referrer will only be entitled to one Commission per Customer and following delivery of the Products in accordance with Clause 8.9 above, no further Commission will be payable to the Assist Referrer.



- 8.11 Where the Dealer is acting as Assist Referrer and any event as described in Clauses 12.1-12.8 occurs, the Company shall be entitled to claim Clawback on the Commission paid to the Assist Referrer in accordance with the provisions of Clause 12 below.

9 PRICES OF PRODUCTS

- 9.1 The Company shall offer the Products at such prices and/or Commission and on such conditions as are notified to the Dealer (usually via the Company's Price Book's but alternatively via any reasonable medium that the Company shall elect to use, including but not limited to the Company Website, or any hyperlinks contained therein) from time to time.
- 9.2 The Company reserves the right to amend and reissue the Company's Price Books at any time. Any notification of amendments to the Company's Price Books by a network operator to the Dealer via that network operator's standard medium of notification shall be effective as if notified to the Dealer by the Company.
- 9.3 Catalogues, price lists, and other advertising literature or material as used by the Company are intended only as an indication as to price and the range of Products offered and no prices, descriptions or other particulars shall be binding on the Company and any typographical, clerical or other error or omission shall be subject to correction at any time without liability on the part of the Company.
- 9.4 'Recommended Retail Price' (or similar statement) as recommended by any network operator stated in a price book or any other document is shown for guidance only.
- 9.5 All prices are given by the Company at the time of the order on an ex-works basis and unless otherwise agreed the Dealer is liable to pay for the cost of delivery. The Company may by giving notice to the Dealer at any time before delivery increase the price of the Products to reflect any increase in the cost to the Company, which without limitation, shall include any of the following circumstances:
- 9.5.1 where the Dealer has requested any variation whatsoever to the quantity, capacity, form, content, style or description of the Products, or has requested an earlier or a later delivery date; or
 - 9.5.2 where steps are required to be taken by the Company to comply with any statutory provisions from time to time in force; or
 - 9.5.3 where increases are made in the price charged to the Dealer of any Products bought in from outside suppliers so as to enable the Company to fulfil the Agreement; or
 - 9.5.4 where the supply of the Products is suspended, varied or otherwise delayed by the Dealer, including without limitation, any delay caused by:
 - 9.5.4.1 any variation of or to the Agreement by the Dealer; or
 - 9.4.5.2 failure to provide the Company with sufficient information to enable the Company to satisfy its obligations under the Agreement.



- 9.6 All prices are exclusive of Value Added Tax and any similar taxes which are payable in addition.
- 9.7 All handset and SIM card packs are supplied to be connected as a pair and the Dealer shall not split packs for sale and/or connection in any way or manner.
- 9.8 Separating SIM cards from handsets paired to be connected together may result in full commission Clawback and/or charged by the Company and/or the relevant network operator in accordance its terms and conditions, or a right to terminate this Agreement pursuant to clause 24.2.1.
- 9.9 Having regard to the current statutory or other United Kingdom government regulations in force from time to time and, in the case of Goods manufactured in the United States of America to the current export rules and regulations of the United States Department of Commerce in force from time to time and regardless of any disclosure made by the Dealer to the Company of an ultimate destination for any Goods, the Dealer will not export or re-export directly or indirectly any Products without first obtaining all such written consents or authorisations as may be required by any applicable regulations.

10 PAYMENT FOR PRODUCTS

- 10.1 All invoices for Products will processed and applied against a Dealer’s account in accordance with the Company’s standard Terms of Account or as otherwise amended from time to time by the Company. The Company reserves the right to amend its Standard Terms of Account.
- 10.2 For the purposes of this clause 10, Standard Terms of Account are as follows:

Doc. Prefix	Transaction Type	Terms
201XXXXXX	Automated Hardware Invoice	28 days from invoice date
202XXXXXX	Automated Hardware Credit	Applied to account immediately
203XXXXXX	Automated Self Billing Credit	Applied to account immediately
204XXXXXX	Automated Self Billing Invoice	Applied to account immediately *
205XXXXXX	Manual Invoice	Applied to account immediately
206XXXXXX	Manual Credit	Applied to account immediately
207XXXXXX	Manual Self Billing Credit	Applied to account immediately
208XXXXXX	Manual Self Billing Invoice	Applied to account immediately

* Automated Self Billing Invoices are raised 14 days after the date of connection as long as the relevant network commission trigger as notified from time to time has been satisfied.

- 10.3 All items due for payment to or by the Dealer will be amalgamated each week through the Company’s weekly payment system to the Dealer’s account.
- 10.4 Payment will be made to Dealer each week there is a credit balance on the Dealer’s account.
- 10.5 Payment will be due to Company each week there is a debit balance on the Dealer’s account.

11 COMMISSION



- 11.1 In consideration for the provision of the Services by the Dealer, the Company shall pay the Commission. The Commission payable shall be the amounts and on the conditions as are notified to Dealer by Company and/or a network operator from time to time, pursuant to clause 9.1.
- 11.2 The Commission is exclusive of value added tax (“VAT”) or similar sales tax which may be levied now or in the future.
- 11.3 The Company shall raise a self-addressed invoice to the Company for the Commission due from the Company to the Dealer in respect of all purchases during that relevant week less any amounts which Company is entitled to deduct or set off pursuant to clause 12 (or elsewhere in this Agreement or at law).
- 11.4 The invoice shall be payable by the Company by BACS transfer (if set up by the Dealer) or by cheque or as otherwise agreed within seven (7) days or as otherwise agreed between the parties in writing, subject to the other terms of this Agreement.
- 11.5 Each party shall be liable to pay interest calculated at the rate of 2% above the base rate of the National Westminster Bank Plc from time to time prevailing from the date for payment is due from such party until paid.
- 11.6 The Company and/or the network operator shall be entitled to reject any order for the Products for any reason in particular, but without limitation, if the Prospective Customer fails to meet the network operator's requirements as to credit worthiness or the Dealer is in breach of any of the provisions of this Agreement. No Commissions or other payments shall be liable to be made to the Dealer in connection with any order that is rejected.

12 CLAWBACKS

- 12.1 The Company reserves the right to reclaim on demand in full or in part the Commission and/or demand payment in full from the Dealer for any Clawbacks, refunds, costs, losses or expenses of any nature incurred by or payable by the Company to a network operator or to any third party in the following circumstances:
 - 12.1.1 where a Product is subsequently disconnected as a result of being returned under any money back guarantee or legal right to cancel or by agreement between the Dealer and the Customer, or by reason of non-payments of deposit or failure to supply proofs of identification and/or address;
 - 12.1.2 where the connection of the Product has been identified by a network operator as fraudulent, including but not limited to, where handsets are shipped abroad or connected through a Slam;
 - 12.1.3 where any payment due has not been received by a network operator pursuant to an agreement between a Customer and a network operator;
 - 12.1.4 where value added services are sold to a Customer and subsequently disconnected;



- 12.1.5 where a Customer downgrades to a lower tariff plan or tariff structure during any minimum term of a contract;
 - 12.1.6 where the Company is entitled to any Clawback under any of the Schedules;
 - 12.1.7 where disconnection takes place within whichever is the earlier of six months or the minimum term of any customer connection contract; or
 - 12.1.8 where a connection or connections have been identified as or suspected of being made for the commercial gain of Customer.
- 12.2 Clawback will be offset against future Commissions due.
- 12.3 If any Commission has already been paid in respect of any Confirmed Purchase where one of the circumstances in clause 12.1 applies, an amount equal to such Commission shall be deducted from the next invoice issued by Company or where there is no such invoice to be raised or the amount of such invoice is less than the amount to be deducted, the Dealer shall pay Company such amount to the extent that it has not been so deducted within seven (7) days of the circumstance arising or the invoice as applicable.
- 12.4 The Company shall be entitled at any time and without notice to the Dealer to set off any liability of the Dealer to the Company against any liability of the Company to the Dealer (but only if such liability of the Company is due and payable). Any exercise by Company of its rights under this clause shall be without prejudice to any other rights or remedies available to the Company under this Agreement or otherwise.
- 12.5 Company reserves the rights to withhold payments of an amount equal to the debit balance due if the Dealer's account balance due exceeds the Commissions awaiting payment to Dealer. If payments are to be withheld the Dealer will be notified by the Company.
- 12.6 Any amount withheld by the Company pursuant to Clause 12.5 shall be paid to the Dealer at the earlier of the account being in credit or termination of this Agreement, subject to Clause 12.7.2.
- 12.7 Company shall be entitled to withhold payment of Commissions and/or other payments, for a period not to exceed 180 days, which are due to Dealer if:
- 12.7.1 any network operator has notified the Company that a 'Do Not Deal' or other restrictive notice or action has been issued by a network operator or exists in relation to the Dealer;
 - 12.7.2 where the Dealer has indicted to, or notified, the Company that it intends to terminate or has terminated this Agreement and the amount withheld by Company is a reasonable pre-estimate of any Clawbacks (and/or other amounts) that may be imposed on or demanded from the Dealer after termination of this Agreement; or
 - 12.7.3 the Company has a reasonable belief that the Dealer cannot or will not or may in the future be unwilling or unable to pay for any Clawbacks and/or other charges, amounts, fees or penalties that may become payable by Dealer to the Company and/or a network operator.



- 12.8 The Company will deduct from any Commission and/or other amounts payable to the Dealer an amount equal to any Clawback or other amount that a network operator has notified the Company is applicable and/or payable by the Dealer.
- 12.9 Any right of the Company to seek full payment of any Clawback or other amount payable by the Dealer shall survive the termination of this Agreement.

13 CHANGES TO TERMS

- 13.1 The Company shall be entitled to vary any of the terms of this Agreement for any reason on thirty (30) days notice including (but not limited to) any variation of any terms of any agreement it or the Dealer may have with any network operator. Any variation will take effect from the first week of the calendar month following the variation and any variations will be posted on the Company's Website as soon as possible after variation. The Company reserves the right to vary the terms of this Agreement insofar as they apply to Assist Partners and Assist Referrers in accordance with the provisions of this Clause 13.
- 13.2 Dealers should be aware and hereby agree that network operators change their terms of trading and payment and commissions regularly, including in relation to clawbacks, refunds, returns and other matters that may affect the Commission and the way that Dealers may operate. Any changes to the network operator's terms will apply immediately.
- 13.3 Dealers should consult the Company's website regularly (but at least weekly) for the latest version of this Agreement and the latest network operator's price guide.
- 13.4 The Dealer confirms that it has access to the internet and agrees on a weekly basis and on every occasion when it is advised in writing by the Company to do so to visit the Company Website to inspect any changes which might be made from time to time to this Agreement.

14 COMPLIANCE

- 14.1 The Dealer undertakes to comply in all respects and at all times with all relevant legislation including any directions resulting from directions made by Ofcom, Ofcom or the Secretary of State for Trade and Industry, the rules of the Mobile Communications Crime Prevention Scheme (the "**Scheme**") as amended from time to time and as established by the Federation of Communications Services Limited ("FCS"), details of which are available on request from the Company and are also available from the Crime Prevention Inspectorate, FCS, Provident House, Burrell Row, Beckenham, Kent BR3 1AT (Telephone 0208 249 6363)
- 14.2 The Dealer warrants that at the date of this Agreement it is of Good Standing as defined in the Scheme and that it is not aware that any advice of intention to issue a notice of breach of the rules of the Scheme has been or will be issued against it.
- 14.3 This Agreement shall terminate automatically if a notice of breach of the rules of the Scheme is issued to the Dealer at any time or if the Dealer fails at any time to comply with the Scheme.



- 14.4 The Dealer shall not do or cause to be done anything which it knows or has reasonable cause to believe would cause the Company to be in breach of any of its obligations to a network operator.
- 14.5 The Dealer shall not directly or indirectly be involved or knowingly, recklessly or negligently permit any other person to be involved in any Fraud and shall notify the Company immediately upon becoming aware of any Fraud and the Dealer will implement without delay and comply with such procedures and rules advised by the Company or the network operator from time to time concerned with Fraud. Failure to comply with such procedures and rules shall be regarded as a material breach of this Agreement. "Fraud" shall include (without limitation) (i) theft, fraud and /or deception (whether actual or attempted) in relation to any Products sold by the Dealer and/or the promotion and marketing of the Products and/or (ii) unauthorised and/or unlawful use (whether actual or attempted) of the Products.

15 AUDIT

- 15.1 The Dealer shall keep such books of account and records as are required to document the calculation of the charges payable under this Agreement and at the request (and cost) of the Company shall permit representatives of the Company at any reasonable time during normal business hours on fourteen (14) days prior notice to enter their premises and inspect and take copies of such books and records and accounts for the purpose of verifying the accuracy of any amount due under this Agreement at any time during the Term and for twelve (12) months thereafter.
- 15.2 In addition to the above, the Dealer shall permit representatives of the Company to enter the Dealer's premises to carry out an audit in order to check that the Dealer is complying with its obligations under this Agreement (i) at any reasonable time during normal business hours on fourteen (14) days prior notice and (ii) without notice on no more than four (4) occasions in any twelve (12) month period.

16 CONFIDENTIALITY

- 16.1 Each party warrants that it (and any person employed or engaged by it in connection with this Agreement):
- 16.1.1 shall use Confidential Information only for the purposes of this Agreement;
 - 16.1.2 shall not disclose Confidential Information to any third party without the prior written consent of the other party; and,
 - 16.1.3 shall take all reasonable precautions to ensure that all Confidential Information is treated as confidential and is not disclosed (save as aforesaid) or used other than for the purposes of this Agreement.
- 16.2 Each party undertakes to the other to take all such steps as shall from time to time be reasonable to ensure compliance with the provisions of clause 16.1 above by its employees, agents, consultants and sub-contractors.
- 16.3 Without prejudice to any other rights or remedies that either party may have, each party acknowledges and agrees that if Confidential Information is used or disclosed other than in accordance with the terms of the Agreement, that party shall, without proof of special damage, be entitled to an injunction,



specific performance or other equitable relief in respect of such misuse, in addition to any damages or other remedy to which it may be entitled.

- 16.4 Neither party shall issue any press release or other public document containing, or make any public statement containing or otherwise disclose to any person who is not a party, its involvement in this Agreement or information which relates to or is connected with or arises out of this Agreement or matters contained in it without the prior written consent of the other party (which shall not unreasonably withheld) unless required to do so by any law or applicable regulation.
- 16.5 The obligations contained in this clause 15.2 shall continue in force for twelve (12) months after the termination of this Agreement.

17 INSURANCE

- 17.1 The Dealer shall at all times during the term of this Agreement, maintain in force and effect at its own expense with a reputable insurance company, public and employers' liability insurance for a minimum level of cover of £5 million and any other insurance which Company requires the Dealer to maintain at any time.

18 WARRANTY

- 18.1 For Products manufactured by the Company, the Company warrants that the Products will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for such period as shall be notified to the Dealer and in the absence of such notification a period of 12 months.
- 18.2 The Company sells the Products with the benefit of the manufacturer's warranty subject to the terms and conditions of such warranty but the Company shall have no further liability to the Dealer.
- 18.3 The warranty in condition 18.1 does not apply:
- 18.3.1 in respect of any defect in the Products arising from any drawing, design or specification supplied by the Dealer;
 - 18.3.2 in respect of any defect arising from fair wear and tear, wilful damage, negligence (including improper storage), improper installation or maintenance, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Product's without the Company's approval; and



- 18.3.3 in respect of any matter regarded as a fault due to a modification, alteration, or replacement required by a change in the requirements of any governmental or regulatory society, institute, authority or other body.
- 18.4 The Company shall replace or repair free of charge the Products (or the part in question) which do not meet the warranty in condition 18.1 or, at the Company's sole discretion, refund to the Dealer the price of the Products (or a proportionate part of the price) but the Company shall have no further liability to the Dealer. Replacements or repairs shall be warranted for an additional period of three months or until the expiry of the original warranty period, whichever is the longer.
- 18.5 Any software is supplied "as is" and the sole obligation of the Company is to supply a corrected version if such software fails to conform to its product description, or at the Company's option, provide a refund provided that the Dealer notifies the Company of any such non-conformance within 30 days of the date of delivery. No warranty is given that the operation of any software will be uninterrupted or error free.
- 18.6 Failure by the Dealer to pay any sum owing will render the applicable warranty null and void.
- 18.7 The Dealer shall be responsible for the cost of carriage and insurance in respect of all Products returned by the Dealer to the Company for repair or replacement. In the case of valid warranty claims the Company shall refund any such reasonable costs.
- 18.8 The Company reserves the right to levy a surcharge in the event of returned Products being found not to be defective.
- 18.9 The Company shall not be responsible for its failure to perform any of its obligations under this contract, if such failure is the result, directly or indirectly, of the Dealer's or third party's products or service (for example, software, hardware or firmware) to correctly process, provide and/or receive data and properly exchange data with Products under this Agreement.
- 19 INDEMNITIES AND LIMITS OF LIABILITY**
- 19.1 Subject as expressly provided in these Conditions all warranties, conditions, representations or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 19.2 WHERE THE GOODS ARE SOLD UNDER A CONSUMER TRANSACTION (AS DEFINED BY THE CONSUMER TRANSACTIONS (RESTRICTIONS ON STATEMENTS) ORDER 1976) THE STATUTORY RIGHTS OF THE DEALER ARE NOT AFFECTED BY THESE CONDITIONS.
- 19.3 Save as otherwise expressly provided in these Conditions, the following provisions set out the Company's entire liability for any act or omission whether in contract, misrepresentation, pre-contractual misrepresentation, fraudulent misrepresentation, tort (including negligence) or otherwise howsoever arising.



- 19.4 The Company's liability to the Dealer for death or injury resulting from negligence shall not be limited.
- 19.5 The Company shall not be liable to the Dealer for any increased costs, expenses, loss of data, use, profits, goodwill, business, contracts, revenues or failure to achieve anticipated savings, or any type of special, indirect or consequential loss (including loss or damage suffered by the Dealer as a result of a claim alleged or an action brought by a third party) even if such loss were reasonably foreseeable or the Company had been advised of the possibility of the Dealer incurring the same.
- 19.6 The Company's entire liability for all claims relating to or in connection with the Goods shall be limited to the amount paid by the Dealer for the Goods.
- 19.7 Save as otherwise expressly provided in these Conditions, the Dealer shall indemnify the Company in respect of any cost, claim, expense, loss or liability suffered or incurred in connection with any claim made by any person in connection with the Goods.
- 19.8 The Dealer acknowledges it is under a duty to pass on to its customers (where appropriate) all instructions, information and warnings supplied to it by the Company.
- 19.9 The Dealer agrees to indemnify and keep indemnified, Company and all other members of the Company Group, from and against all liabilities, penalties, damages, claims, actions, proceedings, costs and expenses (including legal costs on a full indemnity basis) suffered or incurred by Company or any other member of the Company Group arising out of or in connection with any breach of this Agreement by the Dealer (including, without limitation, any clawbacks, charges, deductions or otherwise made by a network operator from the Company or as set out in clause 6 or clause 12 or elsewhere in this Agreement), whether incurred during the Term of this Agreement or thereafter.

20 NON-SOLICITATION

- 20.1 Neither party shall (except with the prior written consent of the other) during the term of this Agreement, and for a period of six months thereafter, directly or indirectly solicit the services of any staff of the other party who have been engaged in the provision of the Services or the management of this Agreement or any significant part thereof either as principal, agent, employee, independent contractor or any other form of employment or engagement other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other party.
- 20.2 The Dealer shall not during the Term of this Agreement or for a period of two years thereafter intentionally attempt to solicit or entice away from Company or assist any person in soliciting or enticing away from the Company any Customer who has been acquired pursuant to this Agreement.

21 DATA PROTECTION

- 21.1 The Dealer shall at all times comply with the provisions of the Data Protection Legislation in its Processing of Personal Data and undertakes that it will adhere to all data protection principles recognised by the European Commission.



- 21.2 Company shall be data controller in respect of all data generated pursuant to this Agreement and the Dealer shall only process Personal Data on behalf of Company in accordance with, and for the purposes set out in, this Agreement and instructions received from Company from time to time.
- 21.3 The Dealer undertakes when acting as a data processor in respect of the Personal Data processed by it pursuant to this Agreement, to assume all Company's obligations under the DPA as if the Dealer were the Data Controller of such Personal Data, and to comply at all times with the Data Protection Policy.
- 21.4 Without limiting the application of clause 21.3, the Dealer undertakes when acting as a data processor to implement and to maintain a security policy substantially in the form of the Data Protection Policy in respect of the Personal Data. The Dealer further undertakes when acting as data processor to ensure the compliance with such security policy by its employees, agents and sub-contractors at all times.
- 21.5 The Dealer undertakes to provide a copy of its security policy in respect of the Personal Data to Company as and when the policy is updated and to consider with Company measures which may be taken from time to time to improve or amend the security policy.
- 21.6 The Dealer undertakes to inform Company promptly in the event of any breach of its security policy which comes to its attention, and to provide Company with an explanation of the cause of the breach and any proposals to remedy the breach. The Dealer shall take all reasonable steps necessary to remedy the breach and to minimise the likelihood of a future breach.
- 21.7 The Dealer undertakes to inform Company promptly in the event of any unauthorised or unlawful Processing of Personal Data ("**unauthorised event**") or an alleged unauthorised event and in the event of any accidental loss, destruction or damage to the Personal Data ("**accidental event**") or an alleged accidental event and to provide Company with an explanation of the cause of the breach and proposals to remedy the unauthorised event or accidental event as the case may be. The Dealer shall take all reasonable steps necessary to remedy the breach and to minimise the likelihood of a future breach.
- 21.8 Where a Data Subject exercises his or her right under the DPA in respect of Personal Data Processed by the Dealer on behalf of Company or where Company is required to deal or comply with any assessment, enquiry, notice or investigation by the Information Commissioner, then the Dealer will co-operate as requested by Company to enable Company to comply with all obligations of Company which arise as a result of the exercise of such rights or as a result of such assessment, enquiry, notice or investigation.
- 21.9 The Dealer shall not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of Company.
- 21.10 The Dealer shall not collect, store, disseminate, transfer, process or use any Personal Data not voluntarily provided by an individual.

- 21.11 The Dealer shall co-operate with Company and provide Company with such information and access to any facilities, premises or equipment from or on which Personal Data is, has been, or is to be processed pursuant to this Agreement as Company may reasonably require to enable it to monitor compliance by the Dealer of its obligations in this clause 22.
- 21.12 The Dealer shall not subcontract any of its obligations under this Agreement regarding the Processing of Personal Data without the prior written consent of Company.
- 21.13 The Affiliate shall have in place internal escalation paths which allow its Agents to escalate any customer complaints relating to data protection to a senior manager.

22 INTELLECTUAL PROPERTY

- 22.1 All rights, including Intellectual Property Rights and database rights, in and used in connection with the Products, the Customer Information and all other material and data supplied to the Dealer by the Company pursuant to this Agreement or supplied by Prospective Customers or Customers to the Dealer (“Rights”), are and shall remain vested in Company absolutely who may use the same as it so wishes and grant licences in respect thereof as it so wishes.
- 22.2 The Dealer hereby assigns to the Company, with full title guarantee free from all encumbrances all present and future right, title and interest it may acquire in any such Rights. The Dealer shall at the Company’s request from time to time (and notwithstanding termination) sign and execute such documents and do all such acts and things and provide such information and assistance as the Company may reasonably require for the purposes of obtaining or confirming to the Company all rights and title to the Rights and for the purpose of asserting protections in or defending any interest in the Rights.
- 22.3 If at any time during the term of this Agreement the Dealer becomes aware that any of the material and data supplied to the Dealer by the Company pursuant to the Agreement is in breach of any applicable law or regulation or infringes the Intellectual Property Rights of any third party or that the Intellectual Property Rights in any material or data supplied by the Company to the Dealer pursuant to this Agreement are being infringed by any third party then the Dealer agrees to immediately notify the Company in writing and the Dealer shall make no comment or admission to any third party in respect of such matter.
- 22.4 The Dealer warrants that the Dealer’s Branding is not in breach of any third party’s intellectual property rights and, without prejudice to any other right or remedy available to the Company, the Dealer will indemnify the Company against all claims, actions, damages, proceedings and related costs and expenses incurred by the Company as a consequence of such a breach.

23 SUSPENSION

- 23.1 Company shall be entitled to suspend this Agreement at any time, for any period of time and without any prior notice to the Dealer in the event of any actual, pending or threatened regulatory intervention or network operator intervention which prevents the Company from offering the Products through the Dealer without being in breach of any law or regulation or agreement with a network operator and without any liability to the Dealer therefore.



- 23.2 Company shall have the right at any time to suspend payment of the Commission and provision of the Products if the Company has reasonable cause to believe that the Dealer is in material breach of any of its obligations under this Agreement (which for the avoidance of doubt shall include a breach of any of the provisions of clause 5 or clause 15.1).
- 23.3 Following such suspension, the Company may request copies of any documents used by the Dealer in the performance of the Services or recordings of any telesales made as part of selling and promotion of the Services and may require any or all Agents to carry out the Company's training and each reach a pass rate of at least 90%.
- 23.4 Following such suspension, the parties shall follow the dispute resolution procedure set out in clause 28.

24 TERM AND TERMINATION

- 24.1 This Agreement shall commence on the Commencement Date and continue thereafter unless or until terminated at any time by either party by giving at least thirty (30) days prior written notice to the other or otherwise terminated in accordance with this Agreement.
- 24.2 Notwithstanding any other provision of this Agreement, this Agreement may be terminated forthwith (other than under clause 24.2.9 below) by notice in writing by either party if:
- 24.2.1 the other commits a material breach or persistent immaterial breaches of any terms of this Agreement which (in the case of a breach capable of being remedied) is not remedied within 10 Business Days of a written request to remedy the same. For the avoidance of doubt, any breach by the Dealer of any of the provisions of clause 5, 10 or 15.1 will be a material breach of this Agreement;
 - 24.2.2 suffers a change of control whether by a change in the ownership of shares or otherwise, and "control" shall have the meaning attributed to it in Section 840 of the Income and Corporation Taxes Act 1988;
 - 24.2.3 the other shall convene a meeting of its creditors;
 - 24.2.4 a proposal shall be made in respect of the other for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors;
 - 24.2.5 the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 24.2.6 a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party;



- 24.2.7 a petition is presented in respect of the other (and is not discharged within 30 days) or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);
 - 24.2.8 the other ceases to trade or carry on business as a going concern, or
 - 24.2.9 the other ceases to be in a position to fulfil its obligations under this Agreement; or
 - 24.2.10 changes the address of any of its premises and fails to notify the Company within 30 days.
- 24.3 The Company may terminate this Agreement immediately if the Dealer is or is suspected of being engaged in any conduct which in the network operator's or the Company's opinion is prejudicial to the network operator's or the Company's interests, goodwill, reputation or commercial interest or if the Dealer is or is suspected of being engaged in fraudulent or other criminal trading activity.
- 24.4 Notwithstanding any other provision of this Agreement, this Agreement may be terminated forthwith by notice in writing by Company if:
- 24.4.1 the percentage of Applications which become Confirmed Purchases is below 25% in any month and this percentage is not increased to 25% or above in any month within 30 days of request by Company; or
 - 24.4.2 the number of Confirmed Purchases falls below 10 in any month.
- 24.5 In the event that this Agreement is terminated at any time for any reason:
- 24.5.1 the Dealer shall return to Company all documents, data, information, products and/or materials belonging to Company which is in the Dealer's possession or control;
 - 24.5.2 the Dealer agrees immediately to stop Processing the Customer Information;
 - 24.5.3 the Dealer shall immediately delete the Customer Information from its databases and destroy all backup or archive copies of such Customer Information;
 - 24.5.4 each party shall immediately cease using the other's Intellectual Property Rights;
 - 24.5.5 the Dealer will, on the request of Company, allow access to its data processing facilities for an audit to enable Company to confirm that the Dealer has complied with the provisions of clauses 24.5.1 to 24.5.3; and
 - 24.5.6 each party shall immediately return to the other party all of its Confidential Information and destroy copies of the same.



- 24.6 In the event this Agreement is terminated by the Company at any time for any of the reasons set out in clauses 24.2.1 – 24.2.9, the Dealer shall forfeit the right to the payment of any unpaid Commission.
- 24.7 Any termination of this Agreement pursuant to this clause 24 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force or any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

25 FORCE MAJEURE

- 25.1 Neither party shall be liable for any delay or failure to perform its obligations under this Agreement resulting from an Event of Force Majeure where such failure or delay could not have been overcome by that party acting reasonably and prudently.
- 25.2 Each party agrees to notify the other immediately upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 25.3 If due to an Event of Force Majeure, the Dealer is unable to perform the Services for more than 30 days then Company shall be entitled to terminate this Agreement.

26 WAIVER

The waiver by either party of a breach or default of any provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding or continuing breach of the same or other provision nor shall any delay or omission on the part of either party in exercising or availing itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

27 NOTICE

Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class post or by electronic or facsimile transmission (such electronic or facsimile transmission to be confirmed by letter posted within 12 hours) to the registered office of the other party and any such notice or other document shall be deemed to have been served (if hand-delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting.

28 DISPUTE RESOLUTION

- 28.1 If during the Term a dispute arises out of or in connection with this Agreement a Senior Manager or Head of Department of each party shall in the first instance meet in good faith with a view to resolving the dispute.
- 28.2 If the resolution of a dispute is not agreed by the Senior Manager/Head of Department within ten (10) days of the dispute arising, either party may request a further meeting to be attended by a Director of the Dealer and a representative of the Company. If the resolution of the dispute is not agreed within thirty (30) days of the dispute arising then either party may pursue such remedies as are available at law or under this Agreement.



29 INVALIDITY AND SEVERABILITY

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

30 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Save as provided by clause 32.2, this Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person other than one of the parties hereto under the Contracts (Rights of Third Parties) Act 1999 and no party can declare itself a trustee of its rights under this Agreement for the benefit of any third party.

31 NO PARTNERSHIP OR COMMERCIAL AGENCY

- 31.1 Nothing in this Agreement shall be taken to constitute a partnership, agency, joint venture or the relationship of employer and employee between the parties and the parties expressly acknowledge that neither is an agent or representative of the other. Accordingly, neither party shall do anything to bind the other to any contract, to pledge the credit of the other party, to bind it to any obligation, commitment or liability nor represent itself as able to do so, except as explicitly provided in this Agreement.
- 31.2 The parties confirm that they have considered the Commercial Agents (Council Directive) Regulations 1993, including the Schedule thereto (the “**Regulations**”) and agree that the Regulations do not apply to this Agreement. Accordingly, Company shall have no liability to the Dealer and/ or the Agents. The Dealer and / or the Agents shall therefore have no claim against Company for any payment in respect of minimum notice, compensation, or indemnity under or pursuant to the Regulations, whether for loss of income, loss of agent rights, loss of goodwill or any analogous loss, upon the termination of this Agreement howsoever caused.
- 31.3 Without prejudice to clause 31.1 above, if and to the extent that the Regulations may nevertheless be found to apply, it is agreed that, upon termination of this Agreement otherwise than by reason of the Dealer’s breach, the Dealer shall be entitled to be indemnified rather than compensated, if and to the extent that the Dealer is otherwise able to prove such entitlement under the Regulations. For the avoidance of doubt, in no circumstances shall the Dealer have any right to compensation under the Regulations.
- 31.4 For the avoidance of doubt, the terms “**Assist Referrer**” and “**Assist Partner**” are defined terms for the purposes of this Agreement and, shall in no way be taken to constitute a partnership between the parties.

32 ASSIGNMENT



- 32.1 This Agreement may not be assigned by the Dealer, nor may any right or obligation be sub-contracted by the Dealer, without the prior written consent of the Company. The Company may assign any and all of its rights and/or obligations under this Agreement without the prior written consent of the Dealer.
- 32.2 This Agreement shall inure for the benefit of each member from time to time of the Company Group.
- 32.3 This Agreement is binding upon and endures for the benefit of the successors in title of the parties.

33 EMPLOYEES

- 33.1 Dealer shall be solely responsible, as between the parties, for making any appropriate PAYE deductions for tax and national insurance contributions (“Contributions”), from the remuneration which any Agents are paid for performing the Services. Without prejudice to clause 17.1, the Dealer agrees to indemnify and keep indemnified, Company and all other members of the Company Group, from and against all liabilities, penalties, damages, claims, actions, proceedings, costs and expenses (including legal costs on a full indemnity basis) suffered or incurred by Company or another member of the Company Group which may be made by the relevant authorities or any Agent in respect of any Contributions or similar payments relating to the provision of the Services by the Dealer and/ or any Agent.
- 33.2 Without prejudice to clause 31, nothing in this Agreement shall be deemed to imply that the relationship between Company and the Dealer or between Company and any Agent is that of employer and employee or worker.
- 33.3 Neither party intends that either this Agreement or the termination thereof shall operate so as to transfer the contracts of employment of any employee from one party to the other. However, should the TUPE Regulations apply in respect of the provisions of this Agreement and/or the Services, then the Dealer shall, or where the Dealer is not the employer, it shall use its best endeavours to procure that, full and accurate details of each of the employees to whom the TUPE Regulations apply (the “**Transferring Employees**”) and any other information which Company may reasonably require relating to the Transferring Employees, is provided to Company either by the Dealer or by the employer of the Transferring Employees as appropriate.

- 33.4 In the event that the contracts of employment or any liability arising in respect of any Transferring Employees shall be transferred from the Dealer to Company whether by operation of law or otherwise, then the Dealer shall indemnify (and keep indemnified) Company against all damages, claims (including without limitation claims for redundancy, unfair and wrongful dismissal) costs, awards, penalties, fines, (including without limitation any liability to tax) and expenses which Company may suffer, sustain, incur, pay or be put to by reason or on account of or arising from the transfer of such Transferring Employees from the Dealer (or any other employee) which by virtue of the TUPE Regulations is deemed to be as a result of an act or omission of either party or any claim or other legal recourse by all or any of the Transferring Employees (or any other employee) in respect of any fact or matter concerning or arising from their employment whether arising under common law, statute or otherwise including but not limited to all payments and benefits accrued due to the Transferring Employees during any period provided that and subject to Company making any claim pursuant to this clause within 1 year of the date of termination of this Agreement.

34 COSTS

Each party shall bear its own costs and expenses in connection with the negotiation, signing and completion of this Agreement.

35 ENTIRE AGREEMENT

- 35.1 This Agreement embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement.
- 35.2 Neither party shall be entitled to rely on any agreement, understanding or arrangement which is not expressly set forth on this Agreement. For avoidance of doubt save as specified in this Agreement, the terms of this Agreement shall have precedence over any printed condition appearing on the reverse of any purchase order, or any purchase order acceptance, delivery form or other documents or letter emanating from either party at any time.

36 LAW

This Agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the exclusive jurisdiction of the courts of England and Wales.



SCHEDULE 1
FURTHER SUPPLEMENTAL CONDITIONS OF SALE FOR PRODUCTS AND SERVICES

1. Appointment as Dealer
 - 1.1 The Dealer is appointed to be a non-exclusive representative to (i) market and promote the Products and introduce Customers to the Company for the Products and to provide support to Customers; and (ii) to market, promote and sell equipment (purchased from Company) to Customers on the terms and conditions of, and in accordance with, this Agreement.
 - 1.2 The Dealer shall agree to use its reasonable endeavours to promote the Products and to procure Customers for the Products.
2. General Obligations of Dealer
 - 2.1 The Dealer shall co-operate with Company reasonable directions, particularly with regard to standards and quality of promotion and service and any bulletins issued by the Company from time to time.
 - 2.2 The Dealer must obtain all licences, permits and approvals necessary or advisable for the sale of any Products and for the performance of its obligations under this Agreement.
 - 2.3 If the Dealer wishes to order Products, the Dealer must submit an order to Company using its stockist sales code for Products and the procedure nominated by Company from time to time in accordance with the terms agreed between the Dealer and Company.
 - 2.4 The Dealer must immediately notify Company if Products within its possession is stolen, lost, damaged or tampered with.
 - 2.5 If the Dealer wishes to sell by a means of distance communication, the Dealer must notify Company and assist Company in providing any information required by the Company. The Dealer shall comply with any instructions issued to it regarding sales by means of distance communication.
 - 2.6 In each of the Dealer's premises used for the sale and promotion of Products (unless advised otherwise in writing):
 - 2.6.1 the linear wall space dedicated to the demonstration and display of Products must equal at least 2 continuous metres;
 - 2.6.2 power outlets must be available as necessary;
 - 2.6.3 the window space dedicated to the demonstration and display of Products must equal at least 50% of the window space in each retail premise for a minimum of 5 months in each year (one of these months to be December);
 - 2.6.4 not less than 20% of the in-store environment used to display mobile networks must be dedicated to the demonstration and display of Products; and
 - 2.6.5 there must be at least one employee with expertise in the Products when each Dealer premises are open for business.



- 2.7 The Dealer acknowledges and agrees that the contract for the sale of the Products is between Dealer and each Customer and Dealer must not in any way suggest otherwise.
- 2.8 Any sales leads passed to the Dealer are to be used only for the purpose of obtaining customers for any of the Products and any misuse of sales leads will entitle Company to terminate the Dealer's appointment.
- 2.9 The Dealer must not encourage, procure or assist any third party to introduce (whether directly or indirectly) Customers to the Company for the provision of the Products.
- 2.10 The Dealer shall not make any representations or warranties in respect of the Products without Company's prior written consent nor incur any liability on behalf of Company.
- 2.11 The Dealer shall submit to Company not less than once a year a business plan in such form as Company shall reasonably request.
- 2.12 The Dealer shall attend and shall ensure that its staff attend such training as Company shall deem necessary to fulfil the Dealer's obligations under this appointment.
- 2.13 The Dealer shall observe and comply with all relevant legislation, statutory instruments and any direction of Company resulting from directions or recommendations made by OFCOM (or its equivalent successor) or the Secretary of State for Trade and Industry.
- 2.14 Dealer must keep secret and confidential all Confidential Information disclosed to it and shall not disclose such Confidential Information save with the prior written consent of the person whose Confidential Information is being disclosed (such consent to disclose may be subject to the recipient being bound by obligations equivalent to those set out in this agreement), except where Dealer can show the Confidential Information is in or has become part of the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement.
- 2.15 Dealer acknowledges that the Customer Information is a valuable and confidential asset of the Company and that the Company own all Customer Information relating to the Products.
- 2.16 The Dealer agrees that in respect of any Customer Information or other personal data contained in the Confidential Information of the Company that it may process on behalf of the Company that at all times:-
- 2.16.1 it will comply with the seventh principle of the Data Protection Act 1998; and
- 2.16.2 it will act solely in accordance with the Company's instructions.
- Where applicable, expressions defined in the Data Protection Act 1998 and used herein shall have the meaning given to them in the Data Protection Act 1998.
- 2.17 Dealer must not:



- 2.17.1 use any Customer Information for any reason other than for the purpose of performing its obligations under this Agreement;
 - 2.17.2 disclose any Customer Information to any person other than to the Company or the Customer to whom it relates;
 - 2.17.3 sell, transfer, rent or otherwise deal with any Customer Information;
 - 2.17.4 unless approved in writing by the Company, create any database containing Customer Information; or
 - 2.17.5 use any Customer Information in any mailing, cold calling or other marketing activity involving the promotion of products and/or services of any competitor of the Company even if such marketing activity also involves the promotion of the Company's products and/or services.
- 2.18 The Dealer shall ensure that such of its employees, servants and agents, at all times:
- 2.18.1 keep secure all Customer Information; and
 - 2.18.2 confine the distribution of completed Applications and any Customer Information to those who need access to it for the purpose of complying with this Agreement;
 - 2.18.3 observe the provisions of clauses 2.16 and 2.17 above and this clause 2.18 in respect of any duties or obligations to be performed in connection with the processing of Customer Information on the Company's behalf.
- 2.19 The Dealer shall ensure that all procedures notified by Company including, but not limited to, Application/registration process, credit checking and provision of the Customer Terms for the Products to Customers are fully complied with.
- 2.20 The Dealer shall ensure that it meets the key performance indicators notified to it by Company.
- 2.21 The Dealer must fully indemnify and hold harmless Company (and its directors, officers, employees and agents) ("Indemnified Parties") from and against any losses, damages, costs (including legal fees) and expenses suffered or incurred by the Indemnified Parties or awarded by a court of competent jurisdiction against the Indemnified Parties as a result of or in connection with any claim or action arising out of:
- 2.21.1 any breach by Dealer of this Agreement;
 - 2.21.2 any breach by Dealer of the Application/registration process;
 - 2.21.3 any claim brought by a third party in relation to an act or omission of the Dealer; or
 - 2.21.4 any breach by Dealer of any statute or regulation.
- 2.22 The Dealer shall comply with all reasonable instructions issued by the Company.
- 3 Intellectual Property Rights**



- 3.1 All Intellectual Property Rights in the Products, the Confidential Information of the Company are the property of the Company (“CPW IP”).
- 3.2 Dealer acknowledges that its right to use CPW IP is only as expressly set out in this Agreement. Dealer acknowledges and agrees that its use of the CPW IP pursuant to this Agreement does not give Dealer any rights, title or interest in the CPW IP except the right to use the CPW IP as expressly permitted by this Agreement, and that all goodwill in or associated with the CPW IP, including any goodwill generated by or arising through Dealer’s activities under this Agreement accrue for the benefit of, and belong exclusively to, the Company or any other party nominated by the Company.
- 3.3 If, for the purposes of Dealer performing any of its obligations under this Agreement, it is necessary for Dealer to use any software provided by the Company (“Software”), then Company shall grant to Dealer a non-exclusive, non-transferable licence to use the Software in accordance with the Company’s direction and licence terms and solely for the purpose of fulfilling Dealer’s obligations under this Agreement. Dealer acknowledges and agrees that, to the maximum extent permitted by applicable law, the Company disclaims all warranties, conditions or terms, whether express or implied, including implied warranties, conditions or terms of satisfactory quality or fitness for a particular purpose with respect to the Software, any installation of the Software and any accompanying documentation. Dealer acknowledges and agrees that the Company will not have any liability for any loss of, damage to, or corruption of, data caused by the installation and/or use of the Software by Dealer. Such licence will automatically terminate at the same time that the Dealer’s appointment under this Agreement is terminated for any reason.
- 3.4 From time to time, Dealer may be permitted to use the Company Intellectual Property Rights . In using the Company Intellectual Property Rights , Dealer must:
- 3.4.1 comply with the the Company Brand Guidelines set out in Appendix A to this Agreement;
 - 3.4.2 ensure that each reference to and use of the Company Intellectual Property Rights is in accordance with any written instructions from the Company or Company;
 - 3.4.3 observe any marketing guidelines and directions regarding the use of the Company Intellectual Property Rights notified by the Company particularly in respect of all advertising materials, websites and signage;
 - 3.4.4 submit details of any use of the Company Intellectual Property Rights to the Company at the address notified to Dealer for prior approval at least ten (10) Business Day’s before use by Dealer. the Company may refuse any use in its absolute discretion.
- 3.5 Dealer must not:
- 3.5.1 Alter, destroy, cover or remove any of the Company Intellectual Property Rights ; or
 - 3.5.2 Affix its own trade mark (or that of a third party), either in addition to or in place of any existing Company Intellectual Property Rights ;



affixed to any Products or packaging supplied by or on behalf of the Company or Company under this Agreement.

- 3.6 Dealer must not licence, permit or otherwise authorise any third party to use the Company Intellectual Property Rights .
- 3.7 Dealer must immediately inform the Company if Dealer becomes aware of any improper or wrongful use by any person of the Company Intellectual Property Rights.
- 3.8 Dealer must not do, cause or authorise to be done, anything which may impair, damage or be detrimental to the reputation or goodwill associated with the Company, Products, or the the Company Intellectual Property Rights, which may adversely affect the value or validity of the Company Intellectual Property Rights or which may bring the Company Intellectual Property Rights into disrepute or which may jeopardise or invalidate any registration or application of registration of the the Company Intellectual Property Rights or the Company's title to the Company Intellectual Property Rights .
- 3.9 Dealer must not use, register, attempt to use or attempt to register the words "CPW", "HSCL", "HSC", "The Carphone Warehouse Limited", the Company", Intellectual Property Rights or any confusingly similar name or mark in its business, including any website domain name, trade name or company name without first having obtained the prior written permission of the Company which may be refused in the Company's absolute discretion. Dealer agrees to comply with all reasonable conditions and instructions (if any) that the Company may attach to the granting of such permission.
- 3.10 Dealer must not register, anywhere in the world, the Company Intellectual Property Rights or any other trade mark which, in the Company's opinion, is identical or confusingly similar to the the Company Intellectual Property Rights .
- 3.11 During the term of this Agreement, the Company may approve and agree from time to time for the Dealer and the Company to produce Jointly Branded Advertising Materials. Where Company obtain such agreement and approval from the Company to produce Jointly Branded Advertising Material the following will apply:
 - 3.11.1 the responsibility for costs of production and distribution of such Jointly Branded Advertising Materials will be agreed at the time;
 - 3.11.2 either the Company or Dealer (the "Creator") must submit all elements of the Jointly Branded Advertising Materials to the other (the "Recipient") for its approval;
 - 3.11.3 if the Recipient rejects any element of the Jointly Branded Advertising Materials submitted by the Creator for approval, the Creator will work with the Recipient to resolve any outstanding issues and continue to resubmit such Jointly Branded Advertising Materials until:
 - 3.11.3.1 the Recipient gives its approval; or



- 3.11.3.2 the Recipient notifies the Creator that the re-submitted Jointly Branded Advertising Materials do not comply with the Recipient's reasonable requirements in which case the parties will not proceed with the Jointly Branded Advertising Materials.
- 3.10.4 each of the Company and Dealer must approve the use of its intellectual property and each will have absolute discretion to refuse the use of its intellectual property in the Jointly Branded Advertising Materials; and
- 3.10.5 each of Dealer and the Company shall grant the other party a non-exclusive licence to use the other party's intellectual property for the purposes of producing Jointly Branded Advertising Materials subject to each party's compliance with the approval process set out above and any other conditions imposed by a party. Such licence will automatically terminate at the same time the Dealer's appointment under this Agreement is terminated for any reason.

4. Insurance

- 4.1 Without limiting its other obligations under this Agreement or otherwise at law, Dealer must effect and maintain at its own expense with a reputable insurance company the following insurance policies ("**Insurance Policies**") with worldwide jurisdiction for a period from the date of this agreement until three (3) years after the termination of this agreement and such other insurances as may reasonably be required by Company or law:

- 4.1.1 employers' liability insurance with minimum insuring limits of £10 million;

- 4.1.2 "commercial combined" insurance; and

- 4.1.3 third party insurance with minimum insuring limits of £5 million per occurrence covering the legal liability of Dealer and Company for injury to persons to include loss or damage caused by infringement of privacy or loss or damage to property arising out of the performance of this agreement by or for Dealer. The policy must contain an "indemnities to principals" clause.

- 4.2 Dealer must provide Company with copies of certificates of insurance and/or proof of payment of premiums on Company's request. If Dealer fails to effect and keep in force the Insurance Policies or to provide copies of the Insurance Policies or premium receipts to Company, then Company may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and recover from Dealer whether by way of deduction or otherwise.

5. Termination & Consequences of Termination

- 5.1 Company shall be entitled to terminate this appointment immediately if:-

- 5.1.1 the Dealer is in breach of the agreement and such breach is incapable of remedy or the breach continues unremedied for 14 days after Dealer receives written notice requiring it to remedy such breach; or



- 5.1.2 the Dealer has failed to account or make payment as required under this Agreement within 14 days following service of written notice; or
 - 5.1.3 the Dealer goes into voluntary or involuntary liquidation or is declared insolvent either in bankruptcy proceedings or other legal proceedings, or has begun negotiations with its creditors or an agreement with its creditors has been reached due to its failure or inability to pay its debts as they fall due or a receiver or administrative receiver is appointed over the whole or part of its business; or
 - 5.1.4 there is a change in the person having possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise); or
 - 5.1.5 Dealer sells or transfers a substantial part of its business; or
 - 5.1.6 if Dealer fails to achieve any one of the key performance indicators notified to it by Company; or
 - 5.1.7 in the event that any licence, permission or authorisation necessary for the provision of the Products by the Company is revoked.
- 5.2 This Agreement may be terminated by either party on giving not less than 30 days written notice to the other.
- 5.3 On termination of this Agreement:
- 5.3.1 Dealer must:-
 - 1 within seven days send to Company, or otherwise dispose of in accordance with Company's directions, all marketing guidelines, advertising materials and Application's in the Dealer's possession;
 - (ii) immediately cease to promote, market or advertise the Products ; and
 - (iii) immediately cease using the the Company Intellectual Property Rights;
 - 5.3.2 Dealer must return all Product's in its possession or control at that time;
 - 5.3.3 Dealer must return Products provided to Dealer for demonstration purposes.
6. **Stock Check/Audit**
- 6.1 The Dealer will allow Company's representative access to the Dealer's premises from time to time for the purpose of stock checking or for any other reasonable purpose in connection with this appointment.



6.2 The Dealer agrees that Company shall be entitled, during the term of this appointment and for a reasonable period thereafter, to undertake or arrange for audits from time to time to inspect and make copies of the Dealer's books of account records and contracts for the purpose of verifying payments under this appointment.

7. Property and Risk

7.1 The stock of Products shall be at the Dealer's risk from delivery of the Products to the Dealer's premises.

7.2 Title in the Products shall remain with Company until Company has received payment in full for all Products whatsoever supplied to the Dealer, together with VAT, interest payable and all other amounts due from the Dealer to Company. Until payment in full has been made the Dealer shall hold the Products in a fiduciary capacity for Company separate from any other assets and clearly marked as Company's property and Company shall be entitled to require the Dealer to deliver up to Company the Products or any of it on demand. If the Dealer fails to deliver up the Products immediately on demand Company shall be entitled on reasonable prior notice to enter the Dealer's premises for the purpose of collecting the Products or any of it. The Dealer will bear the cost of Company removing any such Products from the Dealer's premises.

7.3 The Dealer may sell the Products by way of bona fide sale in the course of business but may not otherwise deal with, sell, part with possession of or otherwise dispose of or handle any of the Products sold hereunder until title has passed to the Dealer in accordance with clause 7.2 above.

7.4 Company may at any time immediately revoke the Dealer's power of sale by written notice if the Dealer is in default for longer than seven days in the payment of any sum whatsoever due to Company or if any bill of exchange, cheque or other negotiable instrument drawn or accepted by the Dealer in favour of Company is dishonoured on presentation for payment or if Company has reasonable grounds for doubting the Dealer's solvency. Furthermore, the Dealer's power of sale shall automatically cease if a receiver is appointed over any of the assets or the undertaking of the Dealer's business or a winding up petition or order is presented or made against the Dealer or the Dealer goes into voluntary liquidation or calls a meeting or makes any arrangement or composition with creditors or commits an act of bankruptcy.

7.5 Should Company revoke the Dealer's power of sale, the Dealer will place the Products at the disposal of Company who shall be entitled on reasonable prior notice to enter the Dealer's premises for the purpose of collecting the Products or any of it. The Dealer will bear the cost of Company removing any such Products from the Dealer's premises.

7.6 Where any of the Products is sold to a third party before title to it has passed to the Dealer, that sale will constitute a sale by the Dealer of Company's property and accordingly the Dealer will hold Company's part of the proceeds of that sale on trust for Company. In such circumstances Company shall be legally and beneficially entitled to proceeds of sale and the Dealer shall pay any proceeds into a separate bank account or otherwise shall ensure that all such proceeds are kept by or on the Dealer's behalf in a separate and identifiable form for Company's sole benefit. In particular, but without prejudice to the generality of the foregoing, the Dealer shall not pay the proceeds of sale into any bank account which is overdrawn.



7.7 Until full title has passed to the Dealer or until the Products have been sold to a third party under clause 7.6 above the Dealer shall at all times keep the Products comprehensively insured in an amount at least equal to the balance of the Price inclusive of VAT and interest outstanding. The policy shall bear an endorsement recording Company's interest and the Dealer shall produce a copy of such policy on demand from Company.

8. Miscellaneous

8.1 Neither party shall assign, sub-contract, transfer, charge or make over this appointment or any of its rights or obligations without the other's prior written consent.

8.2 The Dealer shall ensure that each member of the Dealer's staff attends training relating to the Products.

8.3 The Dealer shall act as principal on its own account in all circumstances and shall not hold itself out as the agent of Company or purport to act on Company's behalf in dealings with third parties.

8.4 The Dealer shall not appoint or purport to appoint any stockists, dealers or sub-dealers.

Appendix A

the Company Brand Guidelines

Where Dealer is entitled to use the Company Intellectual Property Rights in accordance with the Agreement, Dealer must:

1. strictly abide by and observe the Company's instructions, requirements, directions and specifications regarding colour references and style guides for reproduction of any of the Company Intellectual Property Rights, and in particular Dealers must abide by and observe any extranet through which Dealers will have access to any applicable guidelines and branded material as notified to Dealers from time to time);
2. only apply the Company Intellectual Property Rights to materials that comply with the Company's written approval;
3. ensure any trade mark/copyright notice specified by the Company (or such other notice as the Company may in writing require) is affixed adjacent to the Company Intellectual Property Rights or in any other position as the Company directs on all material using or incorporating all or any part of the Company Intellectual Property Rights ;
4. not use the Company Intellectual Property Rights in juxtaposition or in conjunction with any other symbol, logo, mark or other means of identification or merchandising, except with the prior written approval of the Company;
5. not use the Company Intellectual Property Rights in a partial or fragmentary form but always in its complete form as depicted in accordance with the Company's written instructions (unless otherwise agreed in writing by the Company);



6. if cropping the Company Intellectual Property Rights , only do so in accordance with the cropping guide (as notified to Dealers from time to time);
7. not use the Company Intellectual Property Rights on any product or other material (including stationery, business cards or correspondence or any other form of written communication) unless prior written approval is obtained from the Company;
8. not use the Company Intellectual Property Rights otherwise than as permitted by the Agreement or in any manner that would be in contravention of any law, regulation or applicable standard except in accordance with the Company's written instructions;
9. not cause or permit anything which may challenge, damage or endanger the Company Intellectual Property Rights or the Company's title to the Company Intellectual Property Rights or assist or allow any other person to do so except in accordance with the Company's written instructions;
10. not register or attempt to register any part of the names or words forming part of the Company Intellectual Property Rights or any work substantially identical or deceptively similar to as or as part of a business name or corporate name;
11. not register or attempt to register any part of the Company Intellectual Property Rights or any name, word, mark, design, emblem, visual representation or slogan substantially identical with or deceptively similar to as or as part of a trade mark or design;
12. not represent that it has any right, title or interest in the Company Intellectual Property Rights or in any application for registration of it or in any fraudulent, obvious or colour imitation of it other than pursuant to the rights expressly granted by this Agreement; and
13. not use any name, word, mark, design, emblem, visual representation or slogan similar or capable of being confused with any part of the Company Intellectual Property Rights .



SCHEDULE 2

FURTHER SUPPLEMENTAL CONDITIONS OF SALE FOR “O2” PRODUCTS

1 Dealer’s Operational Guidelines

- 1.1 The Dealer shall comply with any operational guidelines, instructions or requirements issued by O2 from time to time. O2 shall be entitled to amend same from time to time by written notice to the Dealer.
- 1.2 The Dealer must ensure that it keeps O2 property (including, without limitation, sales promotional material) safe and, where appropriate, properly secured and in good condition at all times. It must also insure such O2 property against loss, theft and damage up to the full replacement value of the O2 property and ensure that O2’s interest in such O2 Property is noted on its relevant insurance policies. It must provide proof of such noting to O2 when requested. The Dealer agrees that O2 may enter any premises where O2 property is kept to recover it or inspect it at any time.
- 1.3 The Dealer must not (and shall procure that third parties shall not) use any database of end users for any marketing purpose involving the promotion of products of any other competitors of O2 even where such marketing purposes involves in addition the promotion of O2 Products.
- 1.4 The Dealer must keep O2 informed of the progress of its business and must provide information (including, but without limitation, management accounts or partnership accounts) to O2 as and when required by O2 evidencing, to O2’s satisfaction, compliance with its obligations set out in this Agreement. If the Dealer is a company, it shall forward to O2 its statutory directors’ report and audited accounts in respect of and as at the end of its annual accounting period within seven days of their filing with Companies House.
- 1.5 The Dealer may purchase from O2 (or its agent) only such equipment which is specified from time to time, and such equipment shall be supplied by the Dealer only to Customer for use by such Customer end users in relation to connection to the O2 network.
- 1.6 The Dealer must comply with and indemnify O2 against any liability resulting from its failure to comply with any and all applicable laws and regulations in respect of its activities under this Agreement (including, without limitation, the provisions of the Act and all other data protection legislation).
- 1.7 The Dealer shall obtain promptly and maintain, at its expense, all necessary licenses, certificates, permits, or other documents as may be required by local authority law or local council regulations or by the United Kingdom Government or otherwise in order to sell the O2 Products.
- 1.8 The Dealer shall comply fully at all times with the Federation of Communications Services Limited Mobile Communications Crime Prevention Scheme in force and as amended from time to time, or any scheme which replaces or supersedes it.
- 1.9 The Dealer will ensure that O2 Products are sold by the Dealer only through commercial premises and only to Customers.



- 1.10 The Dealer undertakes to promote the O2 Products through commercial premises in such a manner and through such media as shall reasonably be calculated to increase the sale of O2 Products and to promote the relationship of the Dealer with O2.
- 1.11 The Dealer will ensure that O2 Products and services are promoted at all times to best advantage, and that staff act in such a way as not to bring O2, or any other O2 Products, into disrepute.
- 1.12 All commercial premises must provide suitable pre and post sales support to both prospective and existing Customers.
- 1.13 The Dealer shall ensure that all staff engages in the promotion of O2 Products shall have suitable training, skill and expertise for the sale of mobile telecommunications equipment and services, and in particular that all such staff shall attend any training programmes which may be arranged by O2 from time to time.
- 1.14 Commercial Premises shall at all times be suitable for, and capable of, accepting deliveries of equipment, holding such stocks of equipment as are sufficient to meet the reasonably expected requirements of Customers, and capable of holding such stocks securely.
- 1.15 Where O2 Products are sold at retail outlets, the Dealer will ensure that:
 - 1.15.1 All staff (including the management) will meet (or preferably exceed) any reasonable standards expected of any good quality high street retailer (including for example numbers of retail and service staff to be available and that such staff undergo (at the Dealer's cost) any training programmes offered by O2 from time to time in respect of O2 Products. Retail outlets will be staffed at all times with such number of staff, and of such experience, as would reasonably be expected of any good quality retail outlet for mobile communications. Without prejudice to the foregoing, the Dealer will ensure that all retail outlets have a minimum of one O2 trained member of staff in the showroom at any one time.
 - 1.15.2 Each retail outlet must have a prominent area within the shop dedicated to O2. This area must strongly promote O2's network, calling plans, promotions, associated products and value added services.
- 1.16 The Dealer shall not actively supply or solicit sales of the O2 Products outside the United Kingdom without the prior written consent of O2.

2 Branding, advertising and promotion

- 2.1 All legal and beneficial rights in the Intellectual Property Rights shall remain at all times O2's property or the property of its licensor.
- 2.2 Except as expressly provided under this Agreement, the Dealer shall have no rights in respect of any Intellectual Property Rights or any goodwill associated therewith, and the Dealer hereby acknowledges that, except as expressly provided in this Agreement, it shall not acquire any rights in respect thereof.



- 2.3 The Dealer shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any of the Intellectual Property Rights. The Dealer will not knowingly infringe or improperly or wrongfully use any Intellectual Property Rights, or allow any other third party to do so.
- 2.4 The Dealer shall promptly notify O2 of any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Dealer's notice, and of any claim by any third party coming to its notice that the O2 Products infringe any rights of any other person, and the Dealer shall, at the request and expense of O2, do all such things as may be reasonably required to assist O2 in taking or resisting any proceedings in relation to any such infringement or claim.
- 2.5 If O2 is reasonably of the opinion that any O2 corporate marks are not being used by the Dealer as required by O2 pursuant to this Agreement, the Dealer, upon written notice to the effect from O2, shall not thereafter use the O2 corporate marks in that manner and, if required by O2, shall ensure that any non-confirming materials or items are withdrawn from sale and/or publication. The non-confirming materials or items shall be withdrawn as soon as reasonably practicable and (without prejudice to this general requirement) within no more than the Company/30 days of the date of the notice from O2 referred to above. O2 (or its authorised representatives) shall have the right to inspect the premises where any materials or items are stored in order to verify that the Dealer is complying with its obligations under this Clause.
- 2.6 The Dealer acknowledges and agrees that:
- 2.6.1.1 it will not register or attempt to register any O2 corporate marks or any other word or device likely to be confused with the O2 corporate marks
- 2.6.1.2 it will refer to the O2 Products in any publicity or other documents only by the O2 corporate marks, and shall not without O2's prior written consent, use or add any other trademarks or trade names in respect of those O2 Products and, in particular, shall not remove the O2 corporate marks from the equipment or any other materials or items provided by O2.
- 2.6.1.3 it will not alter, remove, conceal or otherwise interfere with any markings or nameplates on equipment or point of sale material nor make additions or modifications to equipment or point of sale material itself without O2's prior written consent;
- 2.6.1.4 the Dealer will upon request by O2 or its authorised representative supply samples showing the use of the O2 corporate marks in its advertising and at all reasonable times permit O2 or any authorised representative of O2 to inspect the use of the O2 corporate marks upon the Dealer's retail outlets; and
- 2.6.1.5 the Dealer shall indemnify O2 against any losses, costs or damages O2 may suffer from misuse of the O2 corporate marks or any Intellectual Property Rights by the Dealer.
- 2.7 **Security and fraud**
- 2.8 The Dealer shall:



- 2.8.1.1 keep all details of Customer (and their use of O2 Products) secure;
- 2.8.1.2 use its best endeavours to ensure that details (in particular and without limitation) of Customers' mobile numbers and SIM Cards are not released to anyone other than an authorised O2 employee and are not stolen;
- 2.8.1.3 adhere to any security procedures and rules which may be published or issued from time to time by O2; and
- 2.8.1.4 ensure that it observes all instructions issued by O2 regarding fraud and crime prevention.



SCHEDULE 3

FURTHER SUPPLEMENTAL CONDITIONS OF SALE FOR “ORANGE” PRODUCTS

1 General Obligations of the Dealer

- 1.1 The Dealer shall agree to use its reasonable endeavours to promote the Orange Products and to procure Customer for the Orange Products. The Dealer shall promote and sell Orange Products to Customers only, and not to any person or entity acting in the capacity of stockist, dealer or sub dealer of the Dealer and not for rental without authorisation from Orange. The Dealer may be required to meet minimum targets regarding sales of Orange Products.
- 1.2 In addition the Dealer shall co-operate with the Company and comply with the Company and/or Orange’s reasonable directions, particularly with regard to standards and quality of promotion and service, and comply with any guidelines (including but not limited to credit checking), price books and reasonable instructions issued by Company and/or Orange.
- 1.3 Any sales leads passed to the Dealer are to be used only for the purposes of obtaining customers for any of the Services and any misuse of sales leads will enable the Company to terminate the appointment.
- 1.4 The Dealer shall not make any promises, guarantees, representations or warranties in respect of the Orange Products without the Company’s prior written consent nor incur any liability on behalf of the Company or Orange.
- 1.5 The Dealer shall submit to the Company not less than once a year a business plan in such form as the Company shall reasonably request.
- 1.6 The Dealer shall attend and shall ensure its staff attend such training as the Company shall deem necessary to fulfil the Dealer’s obligations under this appointment.
- 1.7 The Dealer shall observe and comply with all relevant legislation, statutory instruments and any direction of the Company and/or Orange resulting from directions or recommendations made by OFTEL or its equivalent successor or the Secretary of State for Trade and Industry.
- 1.8 The Dealer agrees that in respect of any Personal Data that it may collect and/or process on behalf of Orange that at all times:
 - 1.8.1 It will comply with the seventh principle of the Act; and
 - 1.8.2 It will act solely in accordance with Orange’s instructions.
- 1.9 The Dealer shall ensure that such of its employees observe the provisions clause 1.8 in respect of any duties or obligations to be performed in connection with the processing of Personal Data on Orange’s behalf.
- 1.9 he Dealer shall indemnify and keep indemnified the Company and/or Orange in respect of any claims, proceedings or actions made or brought against the Company and/or Orange by the Information Commissioner or any Customer arising out of any breach by the Dealer for any of its employees of its undertakings under clauses 1.8 and 1.9 above.



- 1.10 For the avoidance of doubt, all rights, title and interest in the Personal Data shall vest solely in Orange.

2 Orange Name and Logo

The Dealer may use the Orange name and logo and title “Orange Approved Dealer” subject to the Company’s right to withdraw consent for such use immediately if in the Company’s (or Orange’s) opinion the Dealer’s conduct could bring the name or reputation of Orange into disrepute. Use of any title other than “Orange Approved Dealer” implying authorisation or approval for advertising and stationery is strictly prohibited and any breach will entitle the Company to terminate the appointment.

3 Advertising and Promotions

The Company may in its discretion provide materials and/or artwork for advertising and/or special promotions from time to time. Such materials shall be the only means by which the Dealer may promote the Orange Products and any breach will entitle the Company to terminate the appointment unless prior written consent is given by the Company. The Dealer may not sell or market Orange Products by way of inviting direct responses from the public through advertising in the media unless authorised to do so by Orange.

4 Termination

- 4.1 The Company shall be entitled to terminate this appointment immediately if required to do so by Orange for any reason, or if the Dealer is in breach of the agreement or where Orange has reason to believe that Dealer has failed to comply with any guidelines, procedures, directions or instructions issued by Orange.
- 4.2 Upon termination of this appointment in accordance with clause 4.1 above, the Dealer shall cease:
- 4.2.1 To promote, market or advertise the Orange Products, or to make use of the marks, logos or other Intellectual Property Rights of Orange.
- 4.2.2 To use the Personal Data relating to the Orange Products supplied by Customers and all other data and shall arrange for the prompt and safe return of all Personal Data and all other Orange data together with all copies thereof in its possession or control.

5 Stock Check/Audit

- 5.1 The Dealer will allow the Company’s representatives and/or Orange access to the Dealer’s premises from time to time for the purpose of stock checking or for any other reasonable purpose in connection with this appointment.
- 5.2 The Dealer agrees that the Company shall be entitled, during the term of this appointment and for a reasonable period thereafter, to undertake or arrange for audits from time to time to inspect and make copies of the Dealer’s books of account records and contracts for the purposes of verifying payments due under this appointment.

6 Miscellaneous



- 6.1 The Dealer confirms that a comprehensive insurance policy is and will be in force throughout the term of this appointment which shall cover loss or damage to any stock, property material or things are in the possession or under the control of the Dealer. The Dealer shall on request provide copies or satisfactory evidence of such insurance to the Company.
- 6.2 Neither party shall assign, transfer, charge or make over this appointment or any of its rights or obligations without the other's prior written consent.
- 6.3 The Dealer shall ensure that each member of the Dealer's staff attends training that shall be run jointly by Orange and the Company. Such training shall be carried out within the Company/3 months from the date that the Dealer has been first appointed by the Company.
- 6.4 The Dealer shall act as principle on its own account in all circumstances and shall not hold itself out as the agent of the Company or Orange or purport to act on the Company's or Orange's behalf in dealings with third parties.
- 6.5 The Dealer shall not appoint nor purport to appoint any other person or entity acting in the capacity of resellers, dealers, dealers or sub-dealers.
- 6.6 The Dealers shall ensure that the procedures laid down by the Company including but not limited to credit checking and provision of the Customer Contract to Subscribers are fully complied with.
- 6.7 The Dealer will indemnify Orange against all liabilities, claims, demands, actions, costs, damages or loss arising out of any failure by Dealer to comply with any terms of this Agreement.



SCHEDULE 4

FURTHER SUPPLEMENTAL CONDITIONS OF SALE FOR “T MOBILE” PRODUCTS

- 1. Record Retention**
 - 1.1 The Dealer shall maintain and retain for a period of six years following its submission of each statement or invoice true and accurate books of account and information contained in or on discs, tapes, documents or other records as may be reasonably required for calculation or verification of the amounts payable pursuant to this Contract.
 - 1.2 The Dealer shall ensure that all completed contracts, with correct proofs, are sent to the Company and/or T-Mobile as soon as possible with such proofs of identity and address as the Company and/or T-Mobile may from time to time require.
- 2. Obligations**
 - 2.1 The Dealer shall promote the T-Mobile Products and other network services of T-Mobile at all times.
 - 2.2 The Dealer shall not advertise or sell T-Mobile Products or other network services by means of any direct or implied representation that a Customer may be charged by T-Mobile any rate, charge, fee or tariff other than the rates, charges, fees or tariffs offered by T-Mobile as notified to Dealer from time to time.
 - 2.3 The Dealer shall not enter into any supplemental or other contemporaneous agreements with an Customer that deal with any of the same matters as any T-Mobile contract or agreement with a Customer or in any way supplement or conflict with same or which would have the effect of causing a Customer to pay for the same T-Mobile Products or network services or the cancellation of same over and above that charged by T-Mobile for the same or in addition to any charges made by T-Mobile for the same.
 - 2.4 Unless otherwise agreed in writing or as then required by T-Mobile, Dealer may not receive any payment from Customer in respect of T-Mobile network services. In the event that Dealer receive any such payment, it shall notify T-Mobile of the same, hold them separately from its own monies as agent for T-Mobile and comply with such instructions as T-Mobile may issue in relation thereto.
 - 2.5 Dealer shall only issue a T-Mobile SIM if Dealer has strictly performed any Customer acceptance process required by T-Mobile and complied with any specific directions given by T-Mobile from time to time in respect of the issue of any SIM.
 - 2.6 The Dealer shall procure that it meets and continues to meet any criteria notified by T-Mobile from time to time to continue to promote and sell T-Mobile Products.
 - 2.7 Dealer shall not offer for sale pre-pay top-ups at more than the face value of such voucher.



- 2.8 Dealer shall implement any T-Mobile promotion in accordance with such directions and guidance as may be provided, and for such time period as may be specified, by T-Mobile.
- 2.9 Dealer shall in good faith observe and perform the terms and conditions of this Agreement, shall not make any false, unauthorized or misleading representations regarding T-Mobile or its Products, business or services, and shall clearly indicate that it is acting as a non-exclusive agent or selling representative only and not as part of T-Mobile and not permit the public to in any way confuse it with T-Mobile and shall use its own independent legal entity name on all documentation provided to Customers.
- 2.10 Dealer shall immediately notify Company and/or T-Mobile in writing of any information received by Dealer which is likely to be of interest to T-Mobile in relation to the marketing of T-Mobile Products and/or the network services and all complaints it receives with regard to the T-Mobile network services and T-Mobile Products and using all reasonable endeavours to maintain and promote good public relations for T-Mobile while forwarding details of any complaint to T-Mobile.
- 2.11 Dealer shall not, without first obtaining T-Mobile's prior written consent which shall be granted at T-Mobile's absolute discretion:
 - 2.11.1 encourage, procure or assist any third party to introduce (whether directly or indirectly) prospective Consumers to T-Mobile for the provision of T-Mobile Products;
 - 2.11.2 sell or supply any T-Mobile Product, whether purchased directly from T-Mobile or not, to any third party where that third party intends to on-sell or on-supply such T-Mobile Product;
 - 2.11.3 sell or supply any or all of the component items contained in any T-Mobile Product, whether purchased directly from T-Mobile or not, other than in the combinations and packaging as intended by T-Mobile;
 - 2.11.4 sell or supply any T-Mobile Product, whether purchased directly from T-Mobile or not, to any third party who intends to on-sell or on-supply any or all of the component items contained in such T-Mobile Product other than in the combinations and packaging as intended by T-Mobile;
 - 2.11.5 purchase T-Mobile Product from any third party, other than in accordance with the terms of this Agreement or any agreement with T-Mobile; and
 - 2.11.6 use any database of Customers otherwise than in accordance with this Agreement or, without prejudice to the generality of the foregoing, contact or attempt to contact Customers of T-Mobile other than in accordance with any conditions that T-Mobile may attach to any consent to contact Customers.
- 2.12 Dealer shall not, and shall use all reasonable endeavours to prevent any third party from, defrauding or attempting to defraud T-Mobile.



- 2.13 Dealer shall maintain appropriate and secure premises for the storing, demonstration, promoting and selling of T-Mobile Products and ensure that their personnel are suitably trained in the use and sale of T-Mobile Products and in particular (but without limitation) that at all times at least one (1) of the Dealer's employees who is physically present at the Dealer's business and/or retail premises has attended T-Mobile's products and services training course (or any other T-Mobile course which replaces such course).
- 2.14 Dealer shall not sell T-Mobile Products within the United Kingdom except directly to Customers and refrain outside the United Kingdom from seeking Customers for T-Mobile Products, from establishing any branch and from maintaining any distribution depot.
- 2.15 Dealer shall not (without the prior written consent of T-Mobile) facilitate, promote, sell or otherwise use GSM gateways or any other device, which is used to route non-mobile or third party traffic through the T-Mobile network. In the event that the Dealer is in breach of this Clause or T-Mobile reasonably believes that Dealer is in breach of this Clause, T-Mobile shall have the right to immediately suspend from the T-Mobile network, without liability or notice to the Dealer, any SIM card being used (or reasonably believed to be used) with such GSM gateway apparatus or other device and T-Mobile shall be entitled to clawback from the Dealer any benefits paid related to use of a SIM in breach of this Clause and shall be entitled to recover any losses directly suffered by T-Mobile as a consequence of such breach.
- 2.16 Dealer shall not directly or indirectly, assist or enable a Customer in the Territory to cancel its contract or otherwise deactivate the T-Mobile network service, or otherwise encourage a Customer to break its contractual obligations to T-Mobile where the Dealer knows or ought reasonably to know that the Customer is within the minimum term of his or her contract.

3. Acceptance Criteria

- 3.1 If the Dealer has had previous dealings with T-Mobile or a member of its group of companies, either as a previous legal entity or if one of its senior personnel or share holders has been employed or has had a significant interest (for example, as a share holder or partner) in such previous company or entity, T-Mobile must not have encountered any of the following, and/or those dealings must not have been terminated for cause, including, but not limited to:
- 3.1.1. fraud;
 - 3.1.2. misuse of T-Mobile's Intellectual Property Rights or trademarks;
 - 3.1.3. failure to meet any T-Mobile minimum performance levels;
 - 3.1.4. irreconcilable differences;
 - 3.1.5. initiation of unsuccessful litigation against T-Mobile or a member of its associated group of companies, or initiation of a complaint to a trade association, statutory body or other authority against T-Mobile or a member of its associated group of companies where such complaint was not upheld or acted upon within a reasonable period of time.



- 3.2 Dealer must agree to the terms and conditions that appear in the current version of T-Mobile's Authorised Stockist Agreement.
- 4. Performance Criteria**
- 4.1 The Dealer must maintain a dedicated staff with suitable expertise in mobile communications or similar electronic products and in particular at least one employee, who is undertaking or who has undertaken T-Mobile's distance training package or T-Mobile Products and network services training course, must be physically present at each of its business and/or retail premises during opening hours.
- 4.2 The Dealer must provide suitable pre and after sales support to prospective and actual Customers including without limitation information relating to any acceptance process in accordance with T-Mobile policies and practices from time to time.
- 4.3 If the Dealer maintains retail premises for the sale and promotion of T-Mobile Products and/or network services, all such premises:
- 4.3.1 shall have suitable facilities for the demonstration and display of a representative selection of advertising materials, T-Mobile Products and network services; and
 - 4.3.2 shall be located within the area covered by T-Mobile network services.
- 4.4 The Dealer must continue to promote, market and sell telecommunications equipment, computer equipment, office equipment, in-car products, audio equipment or similar electronic products or any of the foregoing.
- 4.5 The Dealer must not act in any way which brings T-Mobile or its products and services or the name T-Mobile into disrepute or which in any way damages the reputation of T-Mobile, its products and services and/or the name T-Mobile or One 2 One.
- 4.6 The Dealer must not purchase T-Mobile Products except from Company.
- 4.7 Should the Dealer undergo a change of control it shall immediately notify T-Mobile in writing – T-Mobile undertakes to inform the new owner via its authorised Company, within six months, as to whether it meets the acceptance criteria required for authorisation.
- 4.8 The Dealer must achieve all of the minimum performance levels as notified by T-Mobile and/or Company from time to time.
- 4.9 The Dealer undertakes to indemnify T-Mobile against all liabilities, claims, demands, actions, costs, damages or loss arising out of any act or omission or breach by the Dealer of the terms of this Agreement, including without limitation any liability the Company may have to T-Mobile as a result.
- 4.10 The Dealer shall co-operate with and participate in all promotions sponsored by T-Mobile from time-to-time and shall use any T-Mobile advertising material strictly in accordance with this Agreement and any conditions issues by T-Mobile and/or Company.



- 4.11 The Dealer's use of any T-Mobile Intellectual Property Rights and trademarks in any promotion, advertising, marketing or signage shall be strictly and wholly in compliance with any T-Mobile guidelines issued from time-to-time and shall promptly notify Company of any infringement, misappropriation or violation of any of T-Mobile's Intellectual Property Rights.
- 4.12 The Dealer agrees that it shall not obliterate, mutilate or otherwise remove T-Mobile's trademarks or Intellectual Property Rights affixed to any T-Mobile Products or packaging supplied by T-Mobile and shall not licence or allow any other third party to use T-Mobile's Intellectual Property Rights.



SCHEDULE 4
FURTHER SUPPLEMENTAL CONDITIONS OF SALE FOR “RIM” PRODUCTS

1 Rim Payment Obligations

- 1.1 The Dealer confirms that RIM does not now nor will it during the course of the agreement between the Company nor during the course of the agreement between the Dealer and the Company have any payment obligation to the Company or the Dealer, nor will it have any such obligation upon termination of the Dealer's right of distribution. To the extent that any such payment obligation is imposed on RIM (whether by operation of law or otherwise) the Dealer hereby irrevocably waives the right to receive such payment.

2 Liability Of Rim

- 2.1 Except in the case of the following exceptions:

- (a) the infringement or misappropriation of the other party's Intellectual Property Rights;
- (b) breach of confidentiality;
- (c) personal injury or death arising from RIM's negligence;
- (d) fraud by RIM; and/or
- (e) breach of RIM's obligations to the extent arising under section 12 Sale of Goods Act 1979, section 2 Sale and Supply of Goods and Services Act 1982, Section 2(3) Consumer Protection Act 1987 or exclusions described in paragraphs 2.2 to 2.9 of this Schedule 11;

(collectively the “Express Exceptions”) in no event shall RIM be liable to the Dealer for any indirect, special, incidental, exemplary or consequential damages (including lost profits) directly or indirectly arising out of or in connection with the transactions contemplated by this Agreement whether or not such damages could reasonably be foreseen or their likelihood disclosed. In particular, RIM shall not be liable to the Dealer for an infringement (or alleged infringement) of the intellectual property of a third party to the extent that such infringement relates to: (a) use of any of the RIM Products and/or RIM Services in combination with software, hardware, equipment, applications or services not supplied by RIM; (b) information, data or programs furnished by the Company, the Company or the Dealer in the course of the supply of the RIM Products or RIM Services; (c) actions taken by RIM at the request of the Company or the Dealer; (d) alteration of the RIM Products and/or RIM Services other than by RIM; (e) failure of the Company or the Dealer to use replaced or modified RIM Products and/or RIM Services provided by RIM in order to avoid such infringement; (f) use of the RIM Products and/or RIM Services in a manner for which it was not designed; (g) breach of intellectual property in which , the Company or the Dealer has a direct or an indirect interest (including without limitation, the Company or the Dealer is a licensee of that intellectual property); or (h) infringement (or alleged infringement) arising as a result of the use of the RIM Products or RIM Services outside of the United Kingdom or as a result of roaming not in compliance with this Agreement that is authorised or facilitated by the Company or the Dealer.

- 2.2 Except for the Express Exceptions, the aggregate liability of RIM to the Dealer and its affiliates (and their respective directors, officers, employees and independent contractors shall not exceed the greater of:

- (a) 125% of the amount that the Dealer has paid the Company in respect of RIM Products in the twelve months immediately preceding the incident giving rise to the liability; and



(b) three million five hundred thousand United States Dollars
(US\$3,500,000).

- 2.3 The limitations, exclusions and disclaimers set out in this paragraph 2 shall apply in respect of RIM whether an action, claim or demand arises from a breach of warranty or condition, breach of contract, negligence, strict liability or any other kind of civil or statutory liability connected with or arising out of this Agreement.
- 2.4 The limitations, exclusions and disclaimers set forth in this paragraph 2 shall not apply only if and to the extent that the laws of a competent jurisdiction requires liabilities beyond and despite these limitations, exclusions and disclaimers.
- 2.5 The exclusions and limitations of liability contained in this Agreement shall apply regardless of whether the loss or damage was foreseeable or otherwise or whether RIM or the Dealer notifies the other of the possibility of greater loss.
- 2.6 RIM shall in no circumstances (whether before or after termination of this Agreement) be liable to the Dealer or any Customer for any loss of data and the Dealer and/or Customer shall at all times keep adequate backup copies of the data and programs held or used by or on behalf of the Dealer and/or Customer.
- 2.7 Notwithstanding anything to the contrary contained in this Agreement, in no event will RIM be liable for any royalties, losses, claims, damages or settlements that relate to the provision of airtime services (including wide area wireless network, wireless local area network, satellite services and internet services) provided for the use of the RIM Products, third party products (including applications, software, technology, products or services) or third party BlackBerry enabled handhelds.
- 2.8 The limitations, exclusions, and disclaimers set out in this Agreement shall apply to RIM and its affiliated companies as well as RIM's and such affiliated companies directors, officers, employees, and independent contractors acting in the course of their engagement with RIM.

3 Customer Warranties

- 3.1 RIM shall have no responsibility or liability for any warranty given to a Customer that is not explicitly provided for under RIM's then current warranty provided to Customers and RIM's then current standard licences (in whatever form or medium) provided by RIM in connection with the RIM Products and services provided in relation thereto (including, without limitation, the 'BlackBerry Software Licence Agreement') ("RIM Licences").

4 Rim Intellectual Property

- 4.1 The Dealer shall not promote, market, distribute, sell or otherwise make available RIM Products, or provide services for RIM Products, and/or services provided by RIM ("**RIM Services**") outside of the United Kingdom. The Dealer shall promptly notify the Company and RIM of requests to supply RIM Products and/or RIM Services for installation or use outside of the United Kingdom, and unless otherwise expressly agreed to in writing by RIM and the Company, the Dealer shall not make the RIM Products and/or RIM Services available to any person that it knows, or reasonably ought to know, will install or use the RIM



Products and/or RIM Services outside of the United Kingdom. However, notwithstanding anything to the contrary in this Agreement nothing shall prevent the Dealer from making "passive" sales of RIM Products, or services for RIM Products, and/or RIM Services to customers in other member states of the European Economic Area ("EEA"), including responding to unsolicited requests from those customers. Where any sales in the preceding sentence are made, the Dealer shall ensure that:

- (a) the RIM Licenses applicable for the territory in which the Customer is supplied the RIM Products is provided to the Customer with the RIM Products or RIM Services;
- (b) the RIM Products and RIM Services are supplied to the Customer in compliance with applicable laws (including without limitation those laws applicable in the Customer's EEA member state);
- (c) it shall comply with its obligations set out in this Agreement with respect to any RIM Products and RIM Services sold outside of the United Kingdom; and
- (d) the Customer is made aware that the Company will not provide 3 Services in connection with the RIM Products to Customers who are normally or primarily resident outside the United Kingdom.

For the purposes of ensuring the Dealer's compliance with paragraphs (a) – (d) above, and on the basis that the information provided will not be used for any purpose other than ensuring the Dealer's compliance with this Agreement, the Dealer will provide the Company and RIM with a monthly report outlining the number of RIM Products and RIM Services that it has sold to Customers outside of the United Kingdom in the preceding calendar month and detailing the quantities of RIM Products and RIM Services sold in each EEA member state. The Dealer shall not promote, market, distribute, sell or otherwise make available:

- (i) RIM Products, or provide services for RIM Products, and/or RIM Services outside of the EEA; or
- (ii) the 3 Services to Customers outside the United Kingdom;

and the Dealer shall promptly notify the Company and RIM of requests to supply RIM Products and/or RIM Services for installation or use outside of the EEA, and unless otherwise expressly agreed to in writing by the Company and RIM, the Dealer shall not:

- (I) make the RIM Products and/or RIM Services available to any person that it knows, or reasonably ought to know, will install or use the RIM Products and/or RIM Services outside of the EEA; and/or
- (II) promote or make available the 3 Services to any Customer it knows, or reasonably ought to know, is primarily resident outside the United Kingdom.

4.2 Except as expressly agreed to in writing by the Company and RIM, the Dealers shall distribute RIM Products as packaged by the Company and RIM with all packaging, notices, disclaimers, license agreements and other materials intact as shipped from the Company. If the Customer indicates it is not willing to accept RIM's Licenses terms and conditions after delivery but



prior to installing the software (within the meaning of RIM's Licences), and returns that software, all accompanying documentation and packaging and proof of purchase to the Dealer in compliance with RIM's Licenses, the Dealer shall refund to the Customer all monies paid to the Dealer for that software media (as well as, if the software media being returned is the desktop software or handheld device software, any monies paid for handheld devices purchased in conjunction with the software media and returned at the same time) in accordance with RIM's Licenses.

4.3 Unless otherwise expressly agreed to in writing by the Company and RIM, the Dealer acknowledges that RIM is providing only English documentation. Any translation or localisation obligations relating to the RIM Products and/or the English documentation, to comply with local legal, regulatory or other requirements shall be the Dealer's responsibility and shall be performed by the Dealer at the Dealer's cost and only in accordance with the terms and conditions described in this Agreement.

4.4 The Dealer shall:

(a) not engage in threatening, deceptive, tortious, offensive, misleading, obscene, illegal, or unethical practices that may be detrimental to RIM or to the RIM Products (including any software) or RIM Services or to any other RIM Products or services and any representations the Dealer makes about RIM and its RIM Products or services shall be fair and accurate;

(b) not make any representations, warranties, or guarantees to Customers concerning the RIM Products (including any software) and/or any RIM Services without RIM's prior express written authorisation, or make any representations, warranties, conditions or guarantees to Customers that RIM specifically precludes and the Dealer agrees to indemnify the Company and RIM for any costs, damages, judgments or liability incurred by the Company and/or RIM as a result of the Dealer making such representation, warranty, condition or guarantee;

(c) comply at its sole expense with all applicable federal, national, state, provincial, and local laws and regulations in marketing the RIM Products and RIM Services and in performing its duties with respect to the RIM Products (including any software) and RIM Services, including, without limitation, those tax, foreign exchange, the transfer of money, anti-mafia or anti-terrorist laws specific to the market, as well as any laws regarding the Dealer, data protection and privacy and shall promptly notify the Company and RIM of any changes thereto which would impact on the relationship between the Dealer, the Company and RIM or the performance of this Agreement;

(d) not represent that any RIM Product (including any software) or RIM Service is designed or licensed for use in circumstances where the failure of such RIM Product or RIM Service is likely to result in significant risks to health or safety, where fail-proof delivery of time-specific information is required, or in otherwise hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems;

(e) without limiting the generality of paragraph 4.4(a) above not sell or represent refurbished or used RIM Products as "new" RIM Products;

(f) not sell, authorise or facilitate the sale or license of software that has not been certified by RIM as being compatible with the RIM Products, or of accessories that have not been approved by RIM;



- (g) not engage in business practices, promotions or advertising which may be injurious to the reputation or business goodwill of RIM;
- (h) upon receiving notice of removal of a RIM Product and/or RIM Service pursuant to this Agreement, stop marketing and distribution of such RIM Product and/or RIM Service as specified in such notice until such time as the Dealer, the Company and RIM acting reasonably address how they are going to deal with such affected RIM Products in the Dealer's inventory;
- (i) not promote, market, distribute any Competitive Wireless Email Solution or load facilitate or acquiesce in any third party loading, any Competitive Wireless Email Solution on RIM handheld devices; and
- (j) not use or permit or acquiesce in any third party using any RIM trade or other marks (including, without limitation, trademarks, trade names, service marks or logos) ("RIM Marks") in any way (including, without limitation, as part of any press releases, products, services, domain name, company name, marketing, and/or promotional materials) without: (i) the express written authorisation from RIM; (ii) the Dealer complying with, the obligations under paragraph 4.5; and (iii) the Dealer doing so in compliance with the latest version of the 'BlackBerry Branding Guidelines' as produced by RIM from time to time.

4.5 The Dealer shall not use or duplicate the RIM Products (including any software) or RIM Services (including any that are subject to evaluation) or the documentation provided by RIM or any other RIM products, services or documentation for any purpose other than as specified in this Agreement, or make such RIM Products (including any software), services or documentation available to unauthorised third parties. Unless otherwise specified in this Agreement, the Dealer may only use the RIM Products and RIM Services for internal or demonstration purposes if the Dealer acquires the RIM Products and RIM Services specifically for internal or demonstration use. Any RIM Products used for demonstration purposes may not be resold as a "new" RIM Product. Resale of any demonstration RIM Products as a "new" Product by the Dealer shall be deemed to be a material breach of this Agreement. The Dealer shall not modify or permit the RIM Products (including any software) to be modified unless expressly agreed to by the Company and RIM.

4.6 The Dealer acknowledges that RIM does not authorise, endorse, or recommend the use of any third party applications with RIM handheld devices. The Dealer further acknowledges and agrees that RIM shall have no responsibility or liability for any third party application or any third party websites, software, content or other products or services (individually or collectively a "Third Party Deliverable ") and RIM shall be relieved from any obligation to repair or replace a damaged RIM handheld device and from any liability for any damage or harm caused by a Third Party Deliverable to the extent that a Third Party Deliverable causes or contributes to such damage. Nothing in this paragraph will preclude RIM from exercising any rights it may have at law or in equity with respect to the continued use of any Third Party Deliverable in conjunction with the RIM Products. For clarity, and without limiting the Dealer's obligations under this Agreement, the Dealer acknowledges and agrees that approval by RIM of a Third Party Deliverable or any marketing activities relating to a Third Party Deliverable (including without limitation, inclusion of any references to a Third Party Deliverable in or on the point of sale box or in any other documents or materials) will not relieve the Dealer of its obligations under this paragraph or otherwise.



- 4.7 The Dealer shall not modify the copyright notices on or associated with the RIM Products, RIM Services, documentation, RIM marketing materials or other literature or materials, or any portion thereof, provided by or on behalf of RIM or the Company to the Dealer or Customers. For clarity, the Dealer acknowledges and agrees that nothing herein transfers any title or ownership interest RIM has in any literature, materials or documentation, however provided to the Dealer or Customer referenced in the preceding sentence.
- 4.8 The Dealer shall not use RIM Marks unless it has received express written authorisation from the Company and RIM and only then in strict compliance with the “BlackBerry Branding Guidelines” as modified from time-to-time by RIM. The Dealer acknowledges that it has not acquired, and will not acquire, any ownership rights in any of the RIM Marks. The Dealer agrees that it will not use any RIM Marks in a manner likely to cause confusion with, dilute or damage the goodwill, reputation or image of RIM or RIM’s products or services. The Dealer agrees not to use any RIM Marks as a feature or design element of another logo or trademark. Upon request by RIM, the Dealer shall supply RIM with specimens of its use of any RIM Marks and will use commercially reasonable endeavours to execute or obtain execution of, the instruments that may be appropriate to register, maintain or renew the registration of any RIM Marks in the United Kingdom. The use of any RIM Marks by the Dealer does not transfer to the Dealer any further right, title, or interest in or to any of the RIM Marks and all such use and associated goodwill will inure to the benefit of RIM. The Dealer shall not register, attempt to register or lay common law claim to any RIM Marks or any mark confusingly similar with a RIM Marks. The Dealer hereby acknowledges that the maintenance of the reputation and quality associated with the RIM Marks requires the highest quality and utmost uniformity with respect to products and services associated with the RIM Marks. RIM may inspect the Dealer’s use or display of the RIM Marks from time-to-time to ensure that such use or display is in accordance with the terms of this Agreement. The Dealer shall permit the Company or RIM or their authorised agent(s) to inspect and monitor the Dealer’s goods and/or services, to determine and verify that the RIM Marks are being used in accordance with the terms of this Agreement. Should the Dealer fail to comply with this provision and fails to cure such non-compliance after written notice by RIM, in addition to any other remedies that RIM may have, RIM may terminate the Dealer’s right to use the RIM Marks with immediate effect.
- 4.9 The Dealer acknowledges that its use of any RIM marketing materials, white papers, and any other product related materials made available to the Company and subcontractors from RIM or its authorised agent (“RIM Marketing Collateral”) is limited to the use licensed in this Agreement and that the Dealer has not acquired, and will not acquire, any ownership rights therein. The Dealer agrees that it will not use any RIM Marketing Collateral in a manner likely to cause confusion with, dilute or damage the goodwill, reputation or image of RIM or RIM’s products or services. The use of any RIM Marketing Collateral by the Dealer does not transfer to the Dealer any further right, title, or interest in or to the RIM Marketing Collateral and all such use and associated goodwill will inure to the benefit of RIM. The Dealer hereby acknowledges that the maintenance of the reputation and quality associated with the RIM Marketing Collateral requires the highest quality and utmost uniformity with respect to products and services associated with the RIM Marketing Collateral. In order to maintain the reputation associated with the RIM Marketing Collateral, the Dealer agrees that it will not amend or deface in any way the RIM Marketing Collateral. RIM (or its authorised agent) may inspect the Dealer’s use or display of RIM Marketing Collateral from time-to-



time to ensure that such use or display is in accordance with the terms of this Agreement. Should the Dealer fail to comply with this provision and fails to cure such non-compliance within a commercially reasonable period of time not to exceed thirty (30) days after written notice by RIM, in addition to any other remedies that RIM may have, RIM may terminate the Dealer's right to use the RIM Marketing Collateral with immediate effect.

- 4.10 The Dealer acknowledges that, subject to the rights granted herein, RIM and the Company retain all right, title and interest, including, without limitation, intellectual property, in and to their respective products or services. The Dealer will include in any of its products or services that incorporate or consist of the products or services of the Company or RIM applicable copyright, trademark and other proprietary rights notices. The Dealer acknowledges that the RIM Products and RIM Services and any product prototypes contain valuable trade-secrets and other intellectual property of RIM. Neither the Dealer nor anyone acting on behalf of the Dealer, including its employees, independent contractors or agents shall acquire any intellectual property related to the RIM Products (including any software), the RIM Services, or product prototypes, including without limitation any such patents, industrial designs, master works, copyright, trade-secrets, or mask works. No ownership, right, interest or title in or to the RIM Products (including any software), RIM Services, or product prototypes will transfer to the Dealer nor to anyone acting on the Dealer's behalf under this Agreement.
- 4.11 Should the Dealer fail to comply with the provisions of paragraphs 4.7 to 4.10 or with the then-current branding guidelines of either the Company or RIM as may be modified from time-to-time, then upon receipt of such non-compliance from the Company or RIM (as the case may be), if the Dealer fails to cure such non-compliance, within a commercially reasonable timescale then the Company or RIM (as the case may be) may exercise any remedies (including those relating to termination) it may have. This remedy does not preclude the Company or RIM from any other remedy which it may have whether under this Agreement, in law, or in equity, including, but not limited to injunctive relief or a claim for damages subject to any limitations specified in this Agreement. In addition to the foregoing, in the event that the Dealer does not comply with the "BlackBerry Branding Guidelines", the Company and/or RIM may immediately discontinue shipment of RIM Products and/or provision of RIM Services until such time as the Dealer cures the non-compliant activity; provided however that the discontinuance of such shipment or provision of RIM Services shall not relieve the Dealer from paying the full value of any orders it has placed, or paying for any RIM Services provided hereunder.
- 4.12 Except as expressly permitted by RIM, the Dealer will not: (i) sell, rent, sublicense, distribute, assign or otherwise transfer any rights to the RIM Products (including any software) or RIM Services without RIM's express prior written consent; (ii) disclose results of any benchmark or similar tests of any RIM Product (including any software) to any third party without RIM's express prior written consent; (iii) modify, translate or otherwise create derivative works of the RIM Product (including any software); or (iv) delete or otherwise destroy the software without RIM's express prior written consent. The Dealer acknowledges and agrees that any distribution of RIM's software and/or sale of the media on which the software is distributed by the Dealer is subject to the Customer accepting the terms of the RIM Licenses. The Dealer will make commercially reasonable endeavours to promptly notify the Company and RIM of any violation of the preceding sentence or any violation by any Customer of any of the RIM Licenses of which it becomes aware.



- 4.13 Except to the extent that RIM is expressly precluded by law from prohibiting these activities, the Dealer shall not, and shall use reasonable commercial endeavours to ensure that Customers do not: (i) alter, modify, adapt, create derivative works, translate, deface, decompile, disassemble, reproduce, or reverse engineer all or any portion of the RIM Products (including any software) or RIM Services or attempt to do so; or (ii) permit, authorise, or acquiesce in, any other person engaging in these activities, or attempting to do so; or (iii) use the RIM Products (including any software) or RIM Services or any information contained therein or otherwise provided by RIM for the purposes of developing, or having developed any products or services competitive with any of RIM's products or services. Should it become known to the Dealer that a Customer has attempted to modify, reproduce or reverse engineer the RIM Products (including any software) or RIM Services or any part thereof, the Dealer shall immediately notify the Company and RIM and shall direct such Customer to cease and desist in the activity and to contact the Company and RIM directly.
- 4.14 The Dealer shall comply with such latest version of the 'BlackBerry Branding Guidelines' as supplied by the Company or RIM to the Dealer from time to time.

5 DATA PROTECTION AND PRIVACY POLICY

- 5.1 The Dealer agrees that, with respect to any information or data of any kind that personally identifies (or that can be used, together with other information or data, to personally identify) a Customer and which relates solely to the purchase and/or supply of RIM Products and/or RIM Services and which is not any data collected from the Customer for the purposes of the setting up and/or provision of 3 Services ("**End User Data**"), it shall comply with all applicable privacy legislation in the performance of its obligations hereunder in relation to such Customer.
- 5.2 Without limiting the Dealer's obligations under paragraph 5.1, the Dealer shall comply with its own publicly disseminated privacy policy with respect to all End User Data collected directly by the Dealer ("**Direct Recipient**") or received from the Company, the Company or RIM ("**Subsequent Recipient**") in connection with this Agreement.
- 5.3 A Subsequent Recipient shall use the same or better standard of care to safeguard the Direct Recipient's End User Data as it uses to safeguard its own End User Data, but in all instances no less than a reasonable standard of care taking into consideration the principle of applying such appropriate organisational and technical measures as necessary to comply with applicable law. A Subsequent Recipient may disclose the Direct Recipient's End User Data: (A) only to the following parties if they have a need to know the Direct Recipient's End User Data and only if they have entered into a confidentiality agreement with the Subsequent Recipient with terms that afford no less protection to the End User Data than the terms of this Agreement: (i) the Subsequent Recipient's parent, subsidiaries, or affiliates; and (ii) the Subsequent Recipient's and the Subsequent Recipient's parent's subsidiaries, and affiliates' employees who have a need to know the End User Data in order to fulfil the Subsequent Recipient's obligations under this Agreement; and (B) only on the express condition that the Subsequent Recipient is vicariously liable for the failure of any of the parties that have had access to the End User Data through the Subsequent Recipient, to comply with the Subsequent Recipient's obligations herein.



- 5.4 A Subsequent Recipient may extract the personally identifiable information from the Direct Recipient's End User Data and aggregate such data ("**Aggregate End User Data**") to use the Aggregate End User Data for its own internal purposes. A Subsequent Recipient may, without identifying the Direct Recipient in any manner, disclose such Aggregate End User Data to a third party or the public. A Subsequent Recipient may disclose the identity of the Direct Recipient when disclosing such Aggregate End User Data to a third party or the public only with the prior express written consent of the Direct Recipient.
- 5.5 A Subsequent Recipient may disclose the Direct Recipient's End User Data, if compelled by legal process. Except as prohibited by law, under such a circumstance, the Subsequent Recipient will: (i) promptly notify the Direct Recipient to permit the Direct Recipient to seek a protective order or take other appropriate action; and (ii) cooperate in the Direct Recipient's endeavours to obtain a protective order or other reasonable assurance that confidential treatment will be afforded to the Direct Recipient's End User Data. A Subsequent Recipient may disclose to a third party any End User Data received from the Direct Recipient without legal process, the consent of, or notice to the Customer to the extent necessary to respond to an emergency that threatens the life, health or security of an individual, or to protect the Company's network (in the case of the Company) or the access to services provided by RIM (in the case of RIM) and the Products (in the case of the Company) and, if required by law, the Subsequent Recipient shall inform the Customer in writing without delay of the disclosure.
- 5.6 Except as expressly specified in this paragraph 5 or as otherwise expressly agreed to in writing by the Company and RIM, a Subsequent Recipient's obligation of strict confidence with respect to the Direct Recipient's End User Data shall last in perpetuity, regardless of termination or expiration of this Agreement.

6 Termination Of Agreement Between Rim And H3g

- 6.1 Notwithstanding anything to the contrary set out in this Agreement, this Agreement shall immediately terminate insofar as it relates to RIM Products or RIM Services upon termination of the supply agreement entered into between RIM and the Company. Such termination will occur automatically without notice to the Dealer.

7 Marketing Approvals

- 7.1 The Dealer agrees not to use any of the RIM Marks, nor refer to any of the RIM Products or RIM Services in any advertisements, press releases, promotional materials and such other materials as may be publicly distributed by the Company or any Dealer without the prior written consent of RIM.

8 International Roaming – Compliance With Laws

- 8.1 In addition to the other provisions of this Agreement relating to obtaining the necessary licences, consents and authorisations, if the Company permits the Dealer to advertise, market and/or communicate directly or indirectly to Customers the international roaming capabilities of the RIM Products (and any related software and accessories) the Dealer must first ensure that, before advertising, marketing and/or communicating to Customers the international roaming capabilities to and from any particular country, it has certified to RIM (on a country by country basis) (with a copy to the Company) that it has



obtained all required licences and other authorisations required for import, use, export and/or re-export of the in connection with such roaming under the laws and regulations of the national and/or other (sub-national and/or supranational) government authorities with authority over the country(ies) and/or territory(ies) from which those RIM Products are being exported or to which they are being imported (collectively, the “**Government Authority(ies)**”). The Dealer is not required to provide RIM with the certification specified above if the advertising, marketing or communication to Customers of the international roaming capabilities for the RIM Products (together with any software, and/or accessories) does not specify any country(ies).

- 8.2 The Dealer shall ensure that each Customer who purchases a RIM Product (including any software and/or accessories) is warned that that RIM Product may include encryption software that is subject to domestic and foreign legal restrictions that restrict export, import and use of the RIM Product (including software, and/or accessories) and that the Customer is not permitted to roam to any country with the RIM Products unless advised by the Company that such international roaming is permitted to that country. The Dealer shall not advise Customers that roaming is permitted for any particular country unless the Company has confirmed that the Dealer has satisfied the requirements of paragraph 8.1 above with respect to that country. The Dealer shall not facilitate or allow the advertising, marketing and/or communications (directly or indirectly to Customers) of the international roaming capabilities for the RIM Products (including software and accessories) except in compliance with this paragraph 8.”



SCHEDULE 6

CPW DATA PROTECTION POLICY

The Carphone Warehouse Group PLC and its subsidiary companies needs to collect and use certain information about people with whom we deal in order to conduct our business. This includes current, past and prospective employees, suppliers, customers and others with whom we communicate. In addition we may occasionally be required by law to collect and use certain types of information to comply with the requirements of government departments. This information must be dealt with in accordance with the law however it is collected, recorded and used – whether on paper, in a computer or recorded on other material – and there are safeguards to ensure this in the Data Protection Act 1998.

We regard the lawful and fair treatment of personal information as very important to successful operations and to maintaining confidence between those with whom we deal and we therefore ensure that we treat personal information lawfully and correctly.

To this end, we fully endorse and adhere to the Principles of Data Protection, as enumerated in the Data Protection Act 1998.

Specifically, the Principles require that personal information:

shall be processed fairly and lawfully and, in particular, shall not be processed unless conditions specified by us from time to time are met;

shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose or purposes;

shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed;

shall be accurate and, where necessary, kept up to date;

shall not be kept for longer than is necessary for that purpose or purposes;

shall be processed in accordance with the rights of data subjects under the Act;

appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal information and against accidental loss or destruction of, or damage to, personal information; and

shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal information.

We therefore will, through appropriate management and strict application of criteria and controls:

observe fully conditions relating to the fair collection and use of information;

meet our legal obligations to specify the purposes for which information is used;



collect and process appropriate information and only to the extent that it is needed to fulfil operational needs or to comply with any legal requirements;

ensure the quality of information used;

apply strict checks to determine the length of time information is held;

ensure that the rights of people about whom information is held can be fully exercised under the Act. These include the right to be informed that processing is being undertaken, the right of access to one's personal information, the right to prevent processing in certain circumstances and the right to correct, rectify, block or erase information which is incorrect;

take appropriate technical and organisational security measures to safeguard personal information; and

ensure that personal information is not transferred abroad without suitable safeguards.

In addition we will ensure that:

we have a Data Protection Officer who is responsible for Data Protection Issues in our organisation;

everyone managing and handling personal information understands that they are contractually responsible for following good data protection practice;

everyone managing and handling personal information is appropriately trained to do so;

everyone managing and handling personal information is appropriately supervised;

anybody wanting to make enquiries about handling personal information knows what to do:

queries about handling personal information are promptly and courteously dealt with;

methods of handling personal information are clearly described;

a regular review and audit is carried out of the way personal information is managed;

methods of handling personal information are regularly assessed and evaluated; and performance with handling personal information is regularly assessed and evaluated.

